



State of California—Health and Human Services Agency
Department of Health Care Services

JENNIFER KENT
Director

EDMUND G. BROWN JR.
Governor

December 20, 2018

Notice to Prospective Respondents

Eligible firms that hold a current IT Consulting Services, Master Agreement (MSA) with the Department of General Services (DGS) are invited to review and respond to the attached Department of Health Care Services (DHCS) Request for Offer (RFO) entitled, CAPMAN M&O Project – Managed Care SCRUM Product Owner” for DHCS contract number 18-95355. In submitting a response to this RFO, compliance with all RFO instructions is imperative.

All agreements entered into pursuant to a DGS Master Agreement will include by reference all terms and conditions attached to or incorporated by reference into the agreement between the Respondent’s firm and DGS. Additionally, the agreement resulting from this RFO will also include Agency Special Provisions added by DHCS and, when applicable, and certain federal terms and conditions.

I. Response Due Date

DHCS’ Office of HIPAA Compliance (OHC) must receive all responses no later than **10:00 a.m. on 01/11/19**. Refer to the attached RFO for detailed submission instructions.

II. Funding Limit

A. A maximum of \$1,250,000 is anticipated to be made available to acquire the services described in this RFO.

1. \$125,000 for the budget period of 03/01/19 through 06/30/19.
2. \$250,000 for the budget period of 07/01/19 through 06/30/20.
3. \$250,000 for the budget period of 07/01/20 through 06/30/21.
4. \$250,000 for the budget period of 07/01/21 through 06/30/22.
5. \$250,000 for the budget period of 07/01/22 through 06/30/23.
6. \$125,000 for the budget period of 07/01/23 through 02/28/24.

B. Funding for each state fiscal year is subject to an annual appropriation by the State Legislature or Congress. If full funding does not become available, DHCS will either cancel the resulting agreement or amend it to reflect reduced funding and reduced activities. Continuation beyond the first state fiscal year is also subject to the contractor’s successful performance. Without prior DHCS authorization, a Contractor may not expend funds set aside for one budget period in a subsequent budget period.

III. Disabled Veteran Business Enterprise Participation

All participating DVBEs that have been certified by California as a DVBE must also submit a completed form(s) STD. 843 (Disabled Veteran Business Enterprise Declaration/Certification). All disabled veteran owners and disabled veteran managers of the DVBE(s) must sign the form(s). The completed form must be included with the Response. At the State's option prior to selection, Contractors responding to an RFO may be required to submit additional written clarifying information. Failure to submit the requested written information as specified may be grounds for Response rejection. This form is available at www.documents.dgs.ca.gov/pd/poliproc/STD-843FillPrintFields.pdf

DHCS requires a minimum of 3% DVBE participation. All non DVBE respondents should use the form identified in the attached RFO to identify each DVBE that will be used, their percentage of use, the specific commercially useful functions they will perform under the resulting agreement, and their current DGS reference or certification number. The winning Contractor will be required to submit a DVBE utilization report within sixty days of the end of the resulting contract.

IV. Prohibition on Follow-on Contracts

Follow-On Consultant Contract Disclosure – This form must be completed by the responding firm to ensure its understanding of prohibited follow-on contracts pursuant to California Public Contract Code section 10365.5.

V. Questions

DHCS believes this RFO is complete and without need of explanation. However, those potential Respondents with questions or in need of clarifying information are advised to contact Lauren Marks at Lauren.Marks@dhcs.ca.gov according to the instructions in the RFO section entitled, "Questions".

DHCS looks forward to receiving your offer in response to our service needs.

Cordially,

Richard Ernst
CAPMAN, Project Manager

Attachment



Request for Offer 18-95355

CAPMAN M&O Project – Managed Care SCRUM Product Owner

Department of Health Care Services
Office of HIPAA Compliance, MS Code 4722
1700 K Street, 4th Floor
P.O. Box 997413
Sacramento, CA, 95899-7413

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K. RFO Exhibits

Exhibits #	Exhibit Name
Exhibit 0	Response Cover Page
Exhibit 1	Cost Worksheet
Exhibit 2	Client References
Exhibit 3	Payee Data Record
Exhibit 4	Statement of Work
Exhibit 5	Key Staff Qualifications
Exhibit 6	Resumes Completion Instructions
Exhibit 7	DVBE Participation Confirmation
Exhibit 8	Respondent / Bidder Declaration
Exhibit 9	Follow-on Consultant Contract Disclosure
Exhibit 10	Disabled Veteran Business Enterprise Declarations. Respondent to download this form (if applicable) and fill out and include in offer as per instructions (see page 2 of the Notice to Prospective Respondents). This form can be downloaded at: www.documents.dgs.ca.gov/pd/poliproc/STD-843FillPrintFields.pdf
Exhibit 11	California Civil Rights Laws Certification

L. Contract Attachments

Attachment 0	Standard Agreement STD 213IT (blank)
Attachment 1	Scope of Work
Attachment 1A	Statement of Work (blank)
Attachment 2	Payment Provisions and Cost Worksheets
Attachment 3	General Provisions – Information Technology (GSPD -401IT)
Attachment 4	Agency Special Provisions
Attachment 5	Prime Contractor's DVBE Subcontracting Report & Instructions

Attachment 6	IT Federal Terms and Conditions (Includes Certification Regarding Lobbying form which must be signed before Contractor begins work)
Attachment 7	Placeholder for Resumes (to be extracted from Contractor's response and reformatted)
Attachment 8	Contractor's Release
Attachment 9	HIPAA Business Associate Addendum
Attachment 10	Work Policies for Private-Sector Contracted Employees (OHC)

A. Procurement Purpose and Description of Services

DHCS' OHC intends to make a single contract award to the Respondent that DHCS believes can best meet its needs.

The Respondent selected as a result of this selection process must address and be able to perform all services in all categories and subcategories described in the section entitled, "Scope of Work".

Compensation for services performed under the resulting contract shall be on a cost reimbursement basis not to exceed the contract total.

B. Contract Term

The term of the resulting agreement is expected to be 24 months with three (3) optional 12 month extensions and is anticipated to be effective from 03/01/19 through 02/28/21. The agreement term may change if DHCS makes an award earlier than expected or if DHCS cannot execute the agreement in a timely manner due to unforeseen delays. The term of the resulting agreement may be extended through the initiation of a formal amendment if DGS exercises a discretionary extension to the Master Agreement. Additionally, no cost term extensions may be implemented by way of a formal amendment to allow completion of all services provided such extensions do not exceed the duration allowed in the DGS' Master Agreement.

The resulting contract will be of no force or effect until it is signed by both parties and approved by DGS, if required. Prospective respondents are hereby advised not to commence performance until all approvals have been obtained. Should performance commence before all approvals are obtained, said services may be considered to have been volunteered if all approvals are not obtained.

C. Key Dates

Below is the tentative time schedule for this informal selection process. It is recognized that time is of the essence. All prospective Respondents are advised of the following time schedule.

Event	Date / Time (If applicable)
Anticipated RFO release date	12/20/18
Questions regarding RFO due	12/28/18 by 3:00 p.m.
Responses to Questions by OHC	01/03/19
Responses due	01/11/19 by 10:00 a.m.
Oral interviews (if held)	To be announced via email, telephone, or in writing if deemed necessary.
Proposed Contract start date	03/01/19
Anticipated Contract end date	02/28/21

D. Questions

Immediately notify DHCS if clarification is needed about the services sought or if a potential Respondent firm has questions about the RFO instructions or requirements.

Put all questions in writing, label them as shown here and transmit them electronically to the following email address:

Questions – RFO – 18-95355

Email to: Lauren.Marks@dhcs.ca.gov.

E. Scope of Work

See Attachment 1 entitled, “Scope of Work” included in the Contract Attachments section of this RFO. Attachment 1 contains a detailed description of the services and work to be performed as a result of this selection process.

F. Response Format and Content Requirements

1. General instructions

- a. Before submitting a response, seek timely clarification of any requirements or instructions that are believed to be vague, unclear or are not fully understood.
- b. Carefully read and familiarize yourself with the enclosed Respondent / Bidder Instructions (**Exhibit 8**). This exhibit is enclosed to fulfill a DGS Procurement Division requirement. This RFO is not a competitive solicitation and DHCS understands some terms outlined in said exhibit do not apply to this solicitation. By submitting a response to this RFO, the Respondent acknowledges that it has read **Exhibit 8**.
- c. In preparing a response, the narrative descriptions and explanation should be straightforward, detailed and precise. DHCS will measure the value of a response by its quality, not its volume, packaging or colored displays.
- d. Arrange for the timely submission of the response. Do not wait until shortly before the deadline to transmit the response to DHCS.

2. Format requirements

- a. Format the narrative portion of the response as follows:
 - 1) Use one-inch margins at the top, bottom, and both sides.
 - 2) Use a font size of not less than 11 points.

3. Content requirements

This section specifies the order and content of each response. Assemble the materials in each response set in the following order:

a. Response Cover Page

A person authorized to bind the Respondent is to sign the Response Cover Page (**Exhibit 0**). If the Respondent is a corporation, a person authorized by the Board of Directors to sign on behalf of the Board is to sign the Response Cover Page.

b. Table of Contents

Include a Table of Contents that identifies each Response section and the contents therein. Paginate all items in each section excluding items placed in the Forms Section and Appendix Section.

c. Response Summary

The summary is not to exceed one (1) page in length. Reviewers may not review excess pages.

In preparing the Response Summary, do not simply restate or paraphrase information in this RFO. Describe or demonstrate, in the Respondent's own words, the following information.

- 1) An understanding of DHCS' needs.
- 2) How the Respondent will integrate DHCS' project into its current obligations and existing workload.
- 3) The Respondent's commitment to perform the services in an efficient and timely manner.

d. Capability Description

- 1) Describe the experience possessed by the responding firm that is most relevant and/or related to the services described in the DHCS' Scope of Work. Focus on experience that has occurred most recently (i.e., within the past five years) and/or was performed for a California government entity.
- 2) Describe any experience possessed by the responding firm that it believes is most similar in nature, scope, and complexity.
- 3) Identify three client references serviced by the Respondent in the past five years that can confirm their satisfaction with the Respondent's services and confirm the timeliness and effectiveness of the services and/or deliverables provided. Use the Client Reference form (Exhibit 2) for this purpose. **Place the**

completed Client Reference (Exhibit 2) form in the Forms section of the response.

e. Statement of Work Description

1) Overview

- a) DHCS is interested in responses that offer organized, comprehensive and technically sound business solutions. Vague explanations of functions, deliverables, methods or approaches may result in reduced ratings.
- b) To the extent possible, the Statement of Work is to include a detailed description of the functions, activities, and methodology that will be used to perform the services.

If the nature of a function or activity hinders discussion of in-depth functions or methods (e.g., a task is dependent upon a future action or multiple approaches will be considered), explain the probable methods that will be used or considered. Also, describe, in this instance, how the Respondent will propose the ultimate plans or strategies to DHCS for consideration and approval before proceeding to carry out those aspects of the project.

2) Rejection, reduction, or substitution of functions or activities

- a) If full funding does not become available, is reduced, or DHCS determines that it does not need all services described in this RFO; DHCS reserves the right to either cancel the agreement or offer an amended contract for reduced services.
- b) If the Respondent's Statement of Work proposes to utilize methods, functions, or activities known by DHCS to be ineffective or determined to be unacceptable, DHCS reserves the right to require the substitution of comparable or alternate items (e.g., methods or approaches, functions, activities, or deliverables, etc.) that can be performed by similar classifications and remain within the total proposed contract cost. It is understood that a formal amendment may be needed to facilitate the substitution of alternate items that result in a modification of the proposed classifications and/or number of labor hours.

3) Statement of Work

- a) Use **Exhibit 4** to describe the services to be performed. Like or similar electronic versions of the DHCS supplied exhibit may be developed for submission with a response. Use as many pages as are necessary to fully detail the Respondent's Statement of Work for the entire contract term.
- b) Project overview
 - i. Briefly, explain or describe the overall approach and/or methods that will be used to accomplish DHCS' Scope of Work.

- ii. If applicable, explain what is unique, creative, or innovative about the proposed approaches and/or methods or solutions offered.
- iii. If, for any reason, the Statement of Work does not or cannot not address all Scope of Work requirements explain the omissions.

c) Project assumptions

- i. Indicate the assumptions made by the Respondent in developing the Statement of Work in response to DHCS' service needs.
- ii. For each assumption listed, explain the reasoning or rationale that led to the assumption.

d) Performance details

- i. Identify each activity/task and function that will be performed. Identify sub-items as applicable. List these in the order they are likely to occur.
- ii. Indicate who will have primary responsibility for performing each major activity/task or function (i.e., classification title and name of Respondent's personnel (if known) and/or subcontracted personnel).
- iii. Include a projected performance time line for each major activity/task, function, or deliverable.

Indicate the approximate beginning and ending month and year. If an activity/task or function will only occur in one state fiscal period or year, indicate the beginning and ending month and year. Changes to the projected time line are subject to DHCS approval after the contract is executed.

If desirable, in addition to indicating approximate start and end dates, Respondent's may use other terms such as start-up, on-going, continuous, turn-over, quarterly, etc. to describe the performance time lines. If such terms are used, Respondent's are to define the meaning of each unique term.

If DHCS' Scope of Work contains timelines or due dates for specific activities/tasks, functions, or deliverables, indicate if the stated time lines can or cannot be met. If DHCS' desired timelines cannot be met indicate why and propose an alternate time line to meet DHCS' needs. Alternate timelines proposed by a Respondent are subject to advance approval by DHCS.

- iv. Identify any deliverables that the Respondent intends to submit to DHCS to prove successful completion of each major activity/task or function.

As applicable, identify the key events or outcomes that will signify or validate task completion or identify the tangible items (deliverables) that will result at the conclusion of the various tasks/activities or functions. Examples of tangible deliverables include but are not limited to: reports, designs, documentation, drafts, files, handbooks, illustrations, lists, manuals, materials, outlines, products, proposals, plans, procedures, publications, written recommendations, etc.

Indicate the anticipated completion dates or a time frame for submitting each identified tangible deliverable e.g., final report to be submitted within 30 calendar days of the contract end date.

- v. If applicable, identify any additional Contractor responsibilities addressed in the Statement of Work that the Respondent believes are necessary to ensure successful performance but were omitted from DHCS' Scope of Work. If DHCS' Scope of Work contained no omissions, indicate this as well.

Likewise, identify the extent and nature of cooperation or assistance needed from DHCS to ensure successful project completion i.e., facility/system/data access, preliminary reviews, system testing, etc. If no DHCS cooperation or assistance is needed, indicate this as well.

f. Project Staffing

1) Project Staffing section content

- a) Include a discussion of how the number of projected personnel, projected labor hours, and proposed duties and responsibilities are sufficient to accomplish all service requirements in a successful and timely manner (see DGS's RFP 5167010, Statement of Work:
<http://www.dgs.ca.gov/pd/Programs/Leveraged/masteragreements/InformationTechnologyConsultingServices.aspx> for the "allowable" classifications)

1 staff member is required. Recommended classifications are:

1 Senior Project Manager

- b) If the Respondent proposes to staff DHCS' project with a Senior Project Manager or Project Manager, the Respondent must include a copy of each staff person's current PMP certification issued by the Project Management Institute (PMI). This certification requirement also applies to subcontractors when applicable. **If applicable, place a copy of each person's PMP Certification in the Appendix section of the response.**
- c) Include a one to two-page resume for each person that is assigned to perform services to accomplish DHCS' Scope of Work. Follow the instructions and Resume format displayed in **Exhibit 6** to meet this requirement. **Place each Resume in the Appendix section of the response.**

To the extent possible, resumes are not to include personal or sensitive information such as a social security number, home address, home telephone number, personal cellular phone number, home/personal email address, marital status, sex/gender, birth date, age, or other personal data that is not needed to determine a person's education achievement or employment experience.

2) Changes to proposed staffing

- a) Personnel and/or subcontractors proposed for use in response to this RFO shall not be changed during the selection process or prior to contract execution.
- b) The pre-identification of personnel including subcontractors in an RFO response does not negate DHCS' right to approve personnel or staffing selections or changes made after the contract award.
- c) If an identified staff person becomes ill, resigns, or is otherwise unable to continue performance, the Respondent is obligated to diligently to locate a suitable replacement in a timely manner. If a staff replacement is necessary, the Respondent has the responsibility for ensuring that replacement staff meet the qualifications requirements established by DGS in the Master Agreement. DHCS reserves the right to approve the selection of replacement staff and reserves the right to amend the contract, if necessary, to modify the labor classification(s) and rates accordingly to match those of the substituted personnel.

g. Cost Worksheets

1) The Cost section will consist of one or more Cost Worksheet Forms (Exhibit 1).

2) General information and completion guidelines

- a) The Cost Worksheet(s) should be either typewritten or completed in ink. Errors, if any, should be crossed out and corrections should be printed in ink or typewritten adjacent to the error. The person who signs the Cost Worksheet Form should initial all corrections preferably in blue ink.
- b) DHCS will accept like images or computerized reproductions of the Cost Worksheet Form included in the RFO provided all data fields are present.
- c) All hourly rates must be multiplied by the projected number of labor hours and totaled. The wage rates offered in response to this RFO may not exceed the rates and allowable adjustments (if any) indicated in the Respondent's Master Agreement with DGS. Check all math computations before submitting your Cost Worksheets.

- d) When completing the Cost Worksheet(s), project all anticipated labor costs to perform all of the services described in the Scope of Work for the entire contract term.

This RFO is intended to result in a cost reimbursement contract in which the Contractor will be reimbursed for anticipated and unanticipated costs incurred up to the amounts bid and not to exceed the maximum amount(s) payable as stated in the resulting contract.

3) Completion instructions

When completing a Cost Worksheet Form (**Exhibit 1**) include the data identified below.

a) Job Classification / Title Identification

Identify each proposed personnel classification (as designated in the DGS Master Agreement. See RFP 5167010, Statement of Work).

b) Number of Hours

Project an estimated number of labor hours required for each classification. If separate Cost Worksheets are present, Respondents must project their labor hours per budget period or state fiscal year.

c) Hourly Rate

Identify the hourly wage rate for each classification.

d) Extended Cost

Multiply the projected number of labor hours by the stated labor rate and enter the extended amount.

e) Brief identification of the Tasks, Functions, or Deliverables for the identified classification

Briefly identify the tasks, functions, and/or deliverables that are proposed to be accomplished by the identified classification. To the extent possible and with the exception of the Unanticipated Cost category, the tasks, functions, and deliverables identified on the Cost Worksheet should relate to entries on the Respondent's Statement of Work.

f) Anticipated Labor Costs Subtotal

Tally the projected labor costs.

g) Unanticipated Labor Costs

Project a simple total cost for unanticipated tasks as discussed in DHCS' Scope of Work or the Respondent's Work Plan. Include a narrative

explanation showing how the total unanticipated labor cost was determined i.e., classifications, estimated labor hours multiplied by given classification rates. Work Authorizations will be required to obtain approval for unanticipated work and labor hours.

As noted on the Cost Worksheet, specific classifications and specific projected labor hours need not be identified for unanticipated tasks, however, the total cost of unanticipated labor hours cannot exceed ten percent (10%) of the total anticipated labor costs shown on the Cost Worksheet.

Actual labor costs will be reimbursed at hourly rate quoted on the Cost Worksheet for a given job classification. In the event unanticipated tasks must be performed by a job classification not identified on the Cost Worksheet, the hourly rate paid shall be the wage rate appearing for that classification in the Respondent's DGS Master Agreement.

h) Cost Worksheet Total

Enter the combined total of all project costs including anticipated labor, unanticipated labor, and travel costs (if allowed) on each individual Cost Worksheet.

h. Appendix Items

1) Submit a complete Copy of the Respondent's Master Agreement with DGS

Include a full copy of the original and all subsequent amendments to the Master Agreement entered into between the Respondent's firm and DGS.

2) Personnel Resumes

Include a one to two-page resume for each person assigned to perform services under the resulting contract. Follow the Resume attachment format supplied in **Exhibit 6**.

3) PMP Certificate (If applicable)

If the Respondent proposed to staff DHCS' project with a Senior Project Manager or Project Manager, include a copy of each staff person's current Project Management Professional (PMP) certificate issued by the Project Management Institute (PMI).

4) Proof of corporate status (If applicable)

If the Respondent is a Corporation, submit a copy of the responding firm's most current Certificate of Status issued by the State of California, Office of the Secretary of State or submit a downloaded copy of the responding firm's on-line status information from the California Business Portal website. Submit an explanation if this documentation cannot be submitted by the response deadline.

Unless otherwise specified, do not submit copies of the Respondent's firm's Bylaws or Articles of Incorporation.

5) Proof of Small Business and/or Disabled Veteran Business Enterprise Certification (If applicable)

If the Respondent is a currently certified small or micro business or Disabled Veteran Business Enterprise (DVBE), include a copy of the certification letter issued by DGS. If the letter cannot be supplied, please include a printout from the DGS's Office of Small Business & Disable Veteran Business Enterprise Services (OSDS) website to prove the Respondent's current active status. The State will verify that SB/DVBE certifications are valid at the time the Response is due. In accordance with California Government Code (GC) section 14837(d) and California Military and Veterans Code Section 999, all SB and DVBE Contractors, subcontractors and suppliers that bid on or participate in a State contract shall perform a Commercially Useful Function (CUF).

i. Forms section

Required Documentation	Submission Instructions
Client References (Exhibit 2)	Identify three client references serviced by the Respondent that can confirm their satisfaction with the Respondent's services and confirm the timeliness and effectiveness of the services and/or deliverables provided. List the most recent client first. If three prior clients cannot be identified, explain why in the space provided on the form.
Payee Data Record (Exhibit 3)	Complete and return a Payee Data Record.
Key Staff Qualifications (Exhibit 5)	For each proposed Contractor staff person, complete the Key Staff Qualifications Form in Exhibit 5. Note that the form requires a minimum of two (2) references for each Contractor staff person.
DVBE Participation Confirmation (Exhibit 7)	Applicable only to non-DVBE respondents. DHCS requires a minimum of 3% DVBE participation. Use Exhibit 7 to identify each DVBE that will be used, their percentage of use, the commercially useful functions they will perform, and their current DGS reference or certification number.
Respondent / Bidder Declaration (Exhibit 8)	Completion of this document is self-explanatory. Instructions appear on Page 2.
Follow-on Consultant Contract Disclosure (Exhibit 9)	Complete and return a Follow-on Consultant Contract Disclosure.

Required Documentation	Submission Instructions
Disabled Veteran Business Enterprise Declarations form (Exhibit 10)	Complete (if applicable) Disabled Veteran Business Enterprise Declarations. Respondent to download this form and fill out and include in offer as per instructions (see page 2 of the Notice to Prospective Respondents). This form can be downloaded at: www.documents.dgs.ca.gov/pd/poliproc/STD-843FillPrintFields.pdf
California Civil Rights Laws Certification (Exhibit 11)	Complete and Return - California Civil Rights Laws Certification.

G. Electronic Submission Instructions

1. Assemble one set of documents comprising the entire response in an electronic format. The electronic response may consist of one single document or multiple separate documents. It is preferred that the electronic documents be in Microsoft Word (.doc) or Adobe Portable Document Format (.pdf). The documents received in electronic form do not need electronic signatures and may be submitted without a signature.
2. Label the response as shown and transmit the electronic copy of the response to the following email address:

Response to RFO 18-95355

Mailto: Lauren.Marks@dhcs.ca.gov.

3. The designated email recipient must receive the electronic copy of the supplier's response by **10:00 a.m. on 01/11/19**. Late receipt of a response may cause DHCS to deem a respondent nonresponsive.
4. Hardcopy submissions are to be assembled in three (3) color sets of documents comprising the entire response and delivered on or before **01/11/19** by **10:00 a.m.** to the mailing or physical address below. Late receipt of the three hardcopy color sets will cause DHCS to deem a respondent nonresponsive. All documents requiring a signature are to be signed in an ink color other than black.

Mailing Address	Physical Address
Attention: Lauren Marks Department of Health Care Services Office of HIPAA Compliance, MS 4722 P.O. Box 997413 Sacramento, CA 95899-7413	Attention: Lauren Marks Department of Health Care Services, Office of HIPAA Compliance 1700 K Street, 4 th Floor Sacramento, CA 95811

H. Response Review and Selection process

A multiple stage process will be used review and/or rate responses. DHCS may reject any response found to be nonresponsive at any stage of review.

1. Stage 1 – Acceptance

- a. Shortly after the submission deadline, DHCS staff will convene to review each response for initial responsiveness to the RFO requirements (e.g., timeliness and completeness).
- b. If deemed necessary, DHCS may collect additional documentation (i.e., missing forms, missing appendix items, missing data from RFO forms, etc.) to enable initial responsiveness to the RFO requirements.
- c. DHCS staff will review the Mandatory Qualifications (MQ) and Desirable Qualifications (DQ) from the Key Staff Qualifications. A response will be considered for evaluation if all candidates meet the MQs.

2. Stage 2 – Response review/rating

- a. Responses that appear to meet the initial RFO requirements and contain the required documentation will be submitted to a review team.

Reviewers will individually and/or as a team review and compare all responses to one another and assign a numeric score or ranking to each response based on its adequacy, thoroughness, and the degree to which the offered solution best meets the funding Program's needs and represents the best value to DHCS.

- b. Reviewers will use the following scoring system to assign points. Following this chart is a list of the considerations that reviewers may take into account when assigning points to a response.

Mandatory Qualifications (MQ) – Pass/Fail
Desirable Qualifications (DQ) – Points

Points	Explanation of rating or point assignment
Pass/Fail	Mandatory Qualifications
10	Respondent Capability
45	Desirable Qualifications
20	Statement of Work Adequacy (If interviews are held, they will account for 10 of the 20 points.)
25	Project Cost

- c. In assigning points, the rating team may consider issues including, but not limited to, the extent to which one response, compared to another response:
 - 1) Lacks information, depth or breadth, or lacks significant facts and/or details, and/or
 - 2) Contains weaknesses, defects or deficiencies, and/or

- 3) Demonstrates a complete understanding of DHCS' needs and the services sought
- 4) Adequately illustrates the Respondent's capability to perform all services and meet all SOW and performance requirements, and/or
- 5) Will contribute to the achievement of DHCS' goals and objectives if implemented, and/or
- 6) Demonstrates the Respondent's capacity and/or commitment to exceed regular service needs (i.e., offers enhanced or advanced features, approaches, or methods; offers creative or innovative business solutions).

3. Stage 3 – Optional oral interview

DHCS may choose to interview the top two (2) highest ranking Respondents. Additional respondents may be interviewed depending on the total number of responses received. DHCS may, at its discretion, choose not to conduct interviews. Interviews, if held, may be in-person, via telephone or teleconference, etc. The purpose of the interview, if held, is to confirm or assess:

- a. The Respondent's understanding of DHCS' needs and the project importance.
- b. The Respondent's commitment to provide timely and effective services.
- c. The capabilities and strengths of the Respondent's management team.
- d. The soundness and strengths of the Respondent's approach to accomplish the objectives and manage the project to ensure successful completion of all SOW requirements.

If DHCS chooses to conduct interviews, the length of each interview should not exceed 1 hour. DHCS anticipates that interviews will be held in Sacramento during the week of 01/21/19. In addition to the Respondent's official authorized representative(s), DHCS requires the presence of the primary and/or key project personnel to attend the interview. As applicable, DHCS will communicate the specific interview requirement information to the affected Respondents via mail, email, or telephone.

I. Selection Requirements and Information

1. Nonresponsive offers

In addition to any condition previously indicated in this RFO, the following occurrences **may** cause DHCS to deem a response/offer nonresponsive.

- a. Failure of a Respondent to comply with the RFO response content or submission instructions.
- b. Receipt of a Statement of Work that is conditional, materially incomplete or defective.
- c. DHCS' discovery, at any stage of the selection or upon contract award, that the winning Respondent is unwilling or unable to comply with the contract terms,

conditions, attachments, or exhibits cited in DGS' Master Agreement, this RFO, or the resulting contract.

2. DHCS rights

In addition to any rights discussed elsewhere in this RFO, DHCS reserves the following rights.

a. RFO corrections - DHCS reserves the right to do any of the following up to the response submission deadline:

- 1) Modify any date or deadline appearing in this RFO or the RFO Time Schedule.
- 2) Issue clarification notices, addenda, alternate RFO instructions, attachments/forms, etc.
- 3) Waive any RFO requirement or instruction for all respondents if DHCS determines that the requirement or instruction was unnecessary, erroneous, or unreasonable. If deemed necessary by DHCS, DHCS may also waive for all respondents any unnecessary, erroneous, or unreasonable RFO requirement or instruction that is detected after responses received or during the review process.

b. Response rejection

DHCS, at its sole discretion, reserves the right to reject any response containing price elements that exceed the anticipated funding limit(s) indicated by DHCS in its RFO cover letter, RFO, or other communication.

DHCS, at its sole discretion, reserves the right to reject any response submitted by a firm that has been decertified or ineligible for a contract by a State or Federal agency. This includes firms that are no longer in good standing or not qualified to conduct business in California.

c. DHCS, at its sole discretion, reserves the right to collect, by hand delivery, email, mail or other method, the following information.

- 1) Information or data omitted from a response or required exhibit/form.
- 2) Information/material needed to clarify or confirm statements/claims made by the Respondent in their response.
- 3) Information/material or form/attachment needed to correct or remedy an immaterial defect in a response.

d. Immaterial deficiency

- 1) DHCS may waive any immaterial deficiency in any response and allow the Respondent to remedy those deficiencies. DHCS reserves the right to use its best judgment to determine what constitutes an immaterial deficiency.

- 2) DHCS' waiver of an immaterial deficiency in a response shall in no way modify this RFO or excuse a Respondent from full compliance with all RFO requirements.

e. Correction of clerical or mathematical errors

- 1) DHCS reserves the right, at its sole discretion, to overlook, correct, or require a Respondent to remedy any obvious clerical or mathematical errors occurring in the response or on the Cost Worksheet Form.
- 2) Respondents may be required to submit a revised Cost Worksheet Form if the correction of a mathematical error results in an alteration of any costs, figures, calculations, annual cost, or total cost offered.
- 3) If a mathematical error occurs in a total or extended price and a unit price is present, DHCS will use the unit price to settle the discrepancy.

f. Right to remedy errors

DHCS reserves the right to remedy errors caused by DHCS office equipment malfunctions, negligence by DHCS staff, or natural disasters (i.e., floods, fires, earthquakes, etc.).

g. No contract award or RFO cancellation

The issuance of this RFO does not constitute a commitment by DHCS to award a contract. DHCS reserves the right to reject all responses and to cancel this RFO if it is in the best interests of DHCS to do so.

h. Contract amendments after award

DHCS reserves the right to amend the resulting contract as needed after DHCS makes a contract award to extend the term, alter the annual or total contract amount, alter the number of labor or project hours, alter/substitute comparable personnel (staff) and/or classifications, and/or expand/alter the service description provided the amendment does not alter the original goal, purpose, or scope of the services procured.

i. Staffing changes after contract award

DHCS reserves the right to approve or disapprove changes or substitutions in personnel that occur after DHCS awards the contract.

3. Contract award

- a. Award of the contract, if awarded, will go to the Respondent that offers the best value solution and receives the highest scored response.
- b. DHCS will email or verbally notify the chosen firm of its selection.
- c. Following the contract award losing respondents may submit a request to the funding Program to receive a copy of any or all Respondent offers and scoring / evaluation tools/forms. Response copies will be redacted to remove information deemed by DHCS to be personal, sensitive or confidential. DHCS does not grant requests for debriefing discussions with losing respondents.

4. Verification of Respondent information

By submitting a response, Respondents agree to authorize DHCS to:

- a. Verify any and all claims made by the Respondent including, but not limited to verification of prior experience and possession of certifications or other RFO requirements, and
- b. Check any client reference identified by a Respondent or other resources known by DHCS to confirm the Respondent's business integrity and history of providing effective, efficient, and timely services.

5. Appeals

California law does not authorize appeals in relation to informal Master Agreement selection processes. The selection decision of DHCS is final and unappealable.

J. Contract Terms and Conditions

1. Contractor Versus Subrecipient

The Contractor is considered a contractor, and not a subrecipient, for the purposes of U.S. Office of Management and Budget Uniform Guidance (Title 2 of the Code of Federal Regulations, Part 200, and specifically, 2 CFR 200.330)

2. Loss Leader Clause

It is unlawful for any person engaged in business within this state (California) to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

3. Other Terms and Conditions

In addition to the terms and conditions appearing in the winning Respondent's Master Agreement with DGS, the winning Respondent must enter a written contract that may contain portions of the Respondent's response (i.e., Cost Worksheet(s), Statement of

Work, Resumes, etc.), standard contract provisions, the contract form, and the attachments identified below. Other attachments, not identified herein, may also appear in the resulting contract.

A Respondent's unwillingness or inability to agree to the proposed terms and conditions shown below or contained in any attachment identified in this RFO may cause DHCS to deem a Respondent ineligible for an award.

The attachments identified below illustrate many of the terms and conditions that may appear in the final agreement between DHCS and the winning Respondent. Other terms and conditions, not specified in the attachments identified below, may also appear in the resulting agreement. Some terms and conditions are conditional and may only appear in an agreement if certain conditions exist (i.e., contract total exceeds a certain amount, federal funding is used, etc.).

In general, DHCS will not accept alterations to DHCS' Scope of Work and the IT Federal Terms and Conditions and may not accept proposed alterations to the Agency Special Provisions offered by a prospective Contractor.

4. Ownership of Products for Federally Funded IT Projects

DHCS, its successors and assigns, and the State of California, including without limitation, any department or the State of California, have all ownership rights including, but not limited to, all data, Intellectual Property, Work Products, software and modifications to software and associated documentation resulting from an agreement based on this RFO. The U.S. Department of Health and Human Services reserves a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use, for Federal Government purposes, software, modifications to software, and documentation that is designed, developed, installed or enhanced with Federal financial participation as required by 45 CFR 95.617. Proprietary operating/vendor software packages which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in required by subdivisions (a) and (b) of 45 CFR 95.617.

The attached GSDP-401IT for federally funded projects has precedence over any inconsistencies in a federally-funded DHCS IT contract. The following provisions of GSPD 401IT are hereby revised to comply with 45 CFR 95.617:

- 37. Rights in Work Product
- 38. Software License
- 43. Patent, Copyright and Trade Secret Indemnity.

5. Sample contract forms / attachments

Attachment Label	Attachment Name
a. Attachment 0	Standard Agreement (face sheet)
b. Attachment 1	Scope of Work

Attachment Label	Attachment Name
c. Attachment 1A	Placeholder for Statement of Work (to be extracted from Contractor's response and reformatted)
d. Attachment 2	Payment Provisions and Cost Worksheets
e. Attachment 3	General Provisions – Information Technology (GSPD-401IT)
f. Attachment 4	Agency Special Provisions
g. Attachment 5	Prime Contractor's DVBE Subcontracting Report & Instructions
h. Attachment 6	IT Federal Terms and Conditions The selected Contractor <u>MUST SIGN</u> the Certification Regarding Lobbying form prior to beginning work.
i. Attachment 7	Placeholder for Resumes (to be extracted from Contractor's response and reformatted).
j. Attachment 8	Contractor's Release
k. Attachment 9	HIPAA Business Associate Addendum
l. Attachment 10	Work Policies for Private-Sector Contracted Employees (OHC)

6. Unanticipated tasks

In the event unanticipated tasks or additional work must be performed that is not specified in this RFO or in the Respondent's Statement of Work, but in DHCS' opinion is necessary to successfully and wholly complete the Scope of Work, DHCS may authorize the performance of such tasks via the initiation and approval of Work Authorizations as discussed in the Scope of Work. Additional or expanded services outside the scope of the original RFO and not covered by the costs projected for unanticipated tasks may only be added to the resulting contract by formal amendment. DHCS also reserves the right to extend the term of the resulting contract as allowed in the DGS Master Agreement to enable the completion of all tasks (anticipated and unanticipated).

7. Resolution of language conflicts (RFO vs. final agreement)

If an inconsistency or conflict arises between the terms and conditions appearing in the final contract and the proposed terms and conditions appearing in this RFO, any inconsistency or conflict will be resolved by giving precedence to the final contract.

RFO Exhibits

Response Cover Page

Name of Responding Firm *(Legal name as it will appear on the contract)*

Mailing Address *(Street address, P.O. Box, City, State, Zip Code)*

Person authorized to act as the contact for this firm in matters regarding this proposal:

Printed Name *(First, Last)*:

Title:

Telephone number:

Fax number:

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Email address:

Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:

Printed Name *(First, Last)*:

Title:

Telephone number:

Fax number:

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Email address:

(CORPORATIONS ONLY) Name/Title of person authorized by the Board of Directors to sign this bid on behalf of the Board:

Printed Name *(First, Last)*:

Title:

Signature of Respondent or Authorized Representative

Date:

Cost Worksheet

Job Classification / Title	Number of Hours	Hourly Rate	Extended Cost	Brief identification of the Tasks, Functions, or Deliverables for the identified classification
Certified Product Owner / Senior Project Manager – Year 1	1800	\$	\$	Contractor will ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system.
Certified Product Owner / Senior Project Manager – Year 2	1800	\$	\$	Contractor will ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system.
Certified Product Owner / Senior Project Manager – Optional Year 3	1800	\$	\$	Contractor will ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system.
Certified Product Owner / Senior Project Manager – Optional Year 4	1800	\$	\$	Contractor will ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system.
Certified Product Owner / Senior Project Manager – Optional Year 5	1800	\$	\$	Contractor will ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system.
		\$	\$	
Anticipated Labor Costs Subtotal			\$	
Unanticipated Labor Costs				
Variable classifications appearing above and/or within the Respondent's Master Agreement with DGS.	Variable	Variable*	\$ Total cannot exceed 10% of Subtotal of Anticipated Labor Costs.	Unanticipated Tasks will be identified and approved by submission of Work Authorizations to DHCS. When only a total cost is projected, explain how the cost was determined.
Grand Total Labor Costs Anticipated Labor plus Unanticipated Labor			\$	Based upon operational needs, DHCS reserves the right to shift the number of labor hours between classifications provided Grand Total Labor Costs are not exceeded.

* The hourly wage rate charged for unanticipated costs cannot exceed the hourly rate projected for anticipated labor. If unanticipated tasks are performed by a classification not identified herein, a Work Authorization will identify both the labor rate and classification and reimbursement shall not exceed the labor rates appearing in the Respondent's Master Agreement.

☐ Check if multiple Cost Worksheets are used

Cost Worksheet Total \$ _____

Name of Responding Firm:		
Signature	Printed Name of Person Signing	Date:

*Do not include the extended cost of optional years 4 and 5 in the 'Anticipated Labor Costs Subtotal'.

This is a sample Cost Worksheet for the Respondent's use. Respondent's may complete this form or create a computer generated like document that contains the same level of cost data. Identify multiple worksheet pages as Page 1 of X, 2 of X, etc.

Page _ of _

Client References

List 3 clients serviced in the past who can confirm the quality & timeliness of the Respondent's services. Preferably list firms with service needs that were similar or related to those sought in this RFO. List the most recent first.

REFERENCE 1

Name of Firm

Street address	City	State	Zip Code
Contact Person	Telephone number ()		
Dates of service	Value or cost of service		
Brief description of service provided			

REFERENCE 2

Name of Firm

Street address	City	State	Zip Code
Contact Person	Telephone number ()		
Dates of service	Value or cost of service		
Brief description of service provided			

REFERENCE 3

Name of Firm

Street address	City	State	Zip Code
Contact Person	Telephone number ()		
Dates of service	Value or cost of service		
Brief description of service provided			

If three references cannot be provided, explain why:

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 5/2018)

1	<p>INSTRUCTIONS: Type or print the information. Complete all information on this form. Sign, date, and return to the state agency (department/office) address shown in Box 6. Prompt return of this fully completed form will prevent delays when processing payments.</p> <p>Information provided in this form will be used by California state agencies to prepare Information Returns (Form1099). See next page for more information and Privacy Statement.</p> <p>NOTE: Governmental entities, i.e. federal, state, and local (including school districts), are not required to submit this form.</p>																																							
2	<p>BUSINESS NAME <small>(As shown on your income tax return)</small></p> <hr/> <p>SOLE PROPRIETOR, SINGLE MEMBER LLC, INDIVIDUAL <small>(Name as shown on SSN or ITIN) Last, First, MI</small> E-MAIL ADDRESS</p> <hr/> <table style="width: 100%;"> <tr> <td colspan="5">MAILING ADDRESS</td> <td colspan="5">BUSINESS ADDRESS</td> </tr> <tr> <td>CITY</td> <td>STATE</td> <td>ZIP CODE</td> <td>CITY</td> <td>STATE</td> <td>ZIP CODE</td> <td>CITY</td> <td>STATE</td> <td>ZIP CODE</td> <td>CITY</td> <td>STATE</td> <td>ZIP CODE</td> </tr> </table>										MAILING ADDRESS					BUSINESS ADDRESS					CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE								
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3	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>PAYEE ENTITY TYPE</p> <p><input type="checkbox"/> PARTNERSHIP</p> <p><input type="checkbox"/> ESTATE OR TRUST</p> </div> <div style="width: 45%;"> <p>CORPORATION:</p> <p><input type="radio"/> MEDICAL <small>(e.g., dentistry, psychotherapy, chiropractic, etc.)</small></p> <p><input type="radio"/> LEGAL <small>(e.g., attorney services)</small></p> <p><input type="radio"/> EXEMPT <small>(nonprofit)</small></p> <p><input type="radio"/> ALL OTHERS</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <p>CHECK ONE BOX ONLY</p> <p><input type="checkbox"/> SOLE PROPRIETOR, INDIVIDUAL, OR SINGLE MEMBER LLC <small>(Disregarded Entity)</small></p> </div> <div style="width: 45%;"> <p>ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN): </p> <p>ENTER SSN OR ITIN: </p> <p><small>Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) are required by authority of California Revenue and Tax Code sections 18646 and 18661)</small></p> </div> </div> <div style="width: 10%; font-size: small;"> <p>NOTE: Payment will not be processed without an accompanying taxpayer identification number.</p> </div>																																							
4	<p><input type="checkbox"/> CALIFORNIA RESIDENT - Qualified to do business in California or maintains a permanent place of business in California.</p> <p><input type="checkbox"/> CALIFORNIA NON RESIDENT <small>(see next page for more information)</small> - Payments to nonresidents for services may be subject to state income tax withholding.</p> <p style="margin-left: 20px;"> <input type="radio"/> No services performed in California. <input type="radio"/> Copy of Franchise Tax Board waiver of state withholding attached. </p>																																							
5	<p>I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the state agency below.</p> <table style="width: 100%;"> <tr> <td colspan="5">AUTHORIZED PAYEE REPRESENTATIVE'S NAME <small>(Type or Print)</small></td> <td colspan="3">TITLE</td> <td colspan="2">TELEPHONE <small>(include area code)</small></td> </tr> <tr> <td colspan="5">SIGNATURE</td> <td colspan="3">DATE</td> <td colspan="2">E-MAIL ADDRESS</td> </tr> </table>										AUTHORIZED PAYEE REPRESENTATIVE'S NAME <small>(Type or Print)</small>					TITLE			TELEPHONE <small>(include area code)</small>		SIGNATURE					DATE			E-MAIL ADDRESS											
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6	<p>Please return completed form to:</p> <table style="width: 100%;"> <tr> <td colspan="5">DEPARTMENT/OFFICE</td> <td colspan="5">UNIT/SECTION</td> </tr> <tr> <td colspan="5">MAILING ADDRESS</td> <td colspan="3">TELEPHONE <small>(include area code)</small></td> <td colspan="2">FAX</td> </tr> <tr> <td>CITY</td> <td>STATE</td> <td>ZIP CODE</td> <td colspan="7">E-MAIL ADDRESS</td> </tr> </table>										DEPARTMENT/OFFICE					UNIT/SECTION					MAILING ADDRESS					TELEPHONE <small>(include area code)</small>			FAX		CITY	STATE	ZIP CODE	E-MAIL ADDRESS						
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PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 5/2018)

1	<p>Requirement to Complete the Payee Data Record, STD 204</p> <p>A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business.</p> <p>Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).</p>
2	<p>Enter the payee's legal business name. The name must match the name on the payee's tax return as filed with the federal Internal Revenue Service. Sole proprietorships and single member limited liability companies (LLCs) must also include the owner's full name. An individual must list his/her full name as shown on the SSN or as entered on the W-7 form for ITIN.</p> <p>The mailing address should be the address at which the payee chooses to receive correspondence. The business address is the address of the business' physical location.</p>
3	<p>Check only one box that corresponds to the payee business type. Corporations must check the box that identifies the type of corporation.</p> <p>The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by the R&TC sections 18646 and 18661 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18662 and its regulations.</p> <p>Payees must provide one of the following TINs on this form: social security number (SSN), individual taxpayer identification number (ITIN), or federal employer identification number (FEIN). The TIN for sole proprietorships, single member LLC (disregarded entities), and individuals is the SSN or ITIN. Only partnerships, estates, trusts, corporations, and LLCs (taxed as partnerships or corporations) will enter their FEIN.</p>
4	<p>Are you a California resident or nonresident?</p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p>Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for state income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:</p> <p style="text-align: center;">Withholding Services and Compliance Section: 1-888-792-4900 E-mail address: wscs.gen@ftb.ca.gov For hearing impaired with TDD, call: 1-800-822-6268 Website: www.ftb.ca.gov</p>
5	Provide the name, title, email address, signature, and telephone number of the individual completing this form. Provide the date the form was completed.
6	This section must be completed by the state agency requesting the STD 204.

Privacy Statement

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.

It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to \$20,000.

You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.

Statement of Work Description

- I. Insert here a brief explanation or description of the overall approaches and/or methods that will be used to accomplish DHCS' Scope of Work.
2. If applicable, explain what is unique, creative, or innovative about the proposed approaches and/or methods.
3. If the Respondent envisions any major complications or delays at any stage of performance, describe those complications or delays and include a proposed strategy for overcoming those issues. Likewise, indicate if the Respondent does not anticipate any major complications or delays.
4. If, for any reason, the Statement of Work does not wholly address each DHCS Scope of Work requirement, fully explain each omission. Likewise, indicate if the Statement of Work does not contain any omissions.
5. Indicate the assumptions that were made in developing the Statement of Work in response to DHCS' Scope of Work. For each assumption listed, explain the reasoning or rationale that led you to that assumption.

6. If applicable, identify the additional Contractor and/or State responsibilities that were included in the Statement of Work that the Respondent believes are necessary to ensure successful performance but were omitted from DHCS' Scope of Work.

Page of

[Like or similar electronic versions of this form may be developed for submission with a response. Use as many pages as are necessary to fully detail the Respondent's Statement of Work for the entire contract term.]

Statement of Work - SAMPLE

Major Functions, Tasks, and Activities	Timeline for performance	Classification of responsible party	Performance Measure and/or Deliverables and Completion Date
1. Analyze X data to determine Y	01/01/XX - 3/15/XX	Application Analyst	Submit report documenting analytical techniques and findings by 4/30/XX.
2. Develop recommendations for the design of a _____. List pros/cons of each, identify preferences and justify chosen design.	By end of 1 st quarter of 200X	Application Analyst	Submit list of recommendations by 3/31/XX.
3. Develop sample model using ABC design.	By end of 2 nd quarter of 200X	Technical Leader	Submit initial model to DHCS for review and approval no later than 6/30/XX.
4. Make design modifications, required by DHCS.	Week of XX/XX/XX	Application Analyst	Re-submit adjusted model for approval no later than _____.
5. Test ____ to confirm proper working action and document positive/negative results.	11/15/XX - 12/15/XX.	Technical Leader	Complete tests and submit written results by 12/31/XX.
6.			
7.			
8.			
9.			
10.			
11.			

Page of

[Like or similar electronic versions of this form may be developed for submission with a response. The above sample is intended to illustrate the type of information that is required. Use as many pages as are necessary to fully detail the Respondent's Statement of Work for the entire contract term.]

Key Staff Qualifications

Complete this exhibit (or a table or spreadsheet similar to it) for each of the proposed key staff. Failure to complete this attachment may be cause for rejection of the offer. Insert additional rows as needed to address all requirements.

Qualifications MC SCRUM Product Owner	Experience		
	# of Years	Name of project(s), staff role and the relevant experience on the project(s). List dates of each engagement	Reference information ¹ : name, e-mail address, phone number
<u>Mandatory:</u> Refer to “Exhibit – Statement of Work” in the “Department of General Services (DGC) Request for Proposal for IT Consulting Services RFP 5167010” for duties/tasks, knowledge/skills, and abilities (KSAs)/competencies, experience and education requirements for a Senior Project Manager)			
<u>Desirable 1:</u> Three (3) years of experience working as an IT Certified Product Owner/Project Manager leading teams with 10 or more people.			
<u>Desirable 2:</u> Two (2) years of experience leading technical teams in the implementation of large-scale IT systems projects within the health-care industry.			

¹ List at least two references in this column. Two references are not required for each row, instead a minimum of two references is required for each staff person.

² The State will accept the following PMI PMP-certification equivalent: Three (3) years of experience on projects utilizing Project Management Body of Knowledge (PMBOK) standards and processes and/or three (3) years of experience on projects utilizing Systems Development Life Cycles (SDLCs) as this applies to large-scale computer system design and/or implementation.

Qualifications MC SCRUM Product Owner	Experience		
	# of Years	Name of project(s), staff role and the relevant experience on the project(s). List dates of each engagement	Reference information¹: name, e-mail address, phone number
<u>Desirable 3:</u> Project Management Institution (PMI) Project Management Professional (PMP) certification or equivalent. ²			
<u>Desirable 4:</u> Two (2) years of experience providing project management for one or more large-scale integration projects.			
<u>Desirable 5:</u> Certification in Scrum Product Owner or Scrum Master.			
<u>Desirable 6:</u> Six (6) months of experience in the practical application of Microsoft SharePoint.			
<u>Desirable 7:</u> One (1) year of experience working with DHCS programs and organization.			
<u>Desirable 8:</u> One (1) year of experience working with implementation of HIPAA transactions.			
<u>Desirable 9:</u> One (1) year of experience working with Medi-Cal capitation rate structures.			
<u>Desirable 10:</u> One (1) year of experience working with Medi-Cal eligibility data.			
<u>Desirable 11:</u> Two (2) years of experience leading and organizing functional Scrum teams as either Product Owner or Scrum Master.			
<u>Desirable 12:</u> Additional years of experience for mandatory experience qualifications.			

Qualifications MC SCRUM Product Owner	Experience		
	# of Years	Name of project(s), staff role and the relevant experience on the project(s). List dates of each engagement	Reference information¹: name, e-mail address, phone number
<u>Desirable 13:</u> Additional years of experience for desirable experience qualifications.			

Resumes

[Name of Staff Person]

Resume Completion Instructions

To the extent possible, the resume for each contract participant should not be lengthy (i.e., limited to one-two pages in length) and should only include the following types of information. There is no required order in which to present the information.

- Person's formal name
- Educational credentials, highest grade completed, degrees obtained (if applicable) and when obtained (e.g., month and year)
- Employment history for up to the past five years including employer name, length of employment, position or functional title, from and to dates, and a very brief description of roles and responsibilities. Employment data should be presented with the most recent employment first and should reflect employment by the Respondent unless the person is serving as a subcontractor.
- Technical, educational, or industry specific certificates (if applicable such as a Project Management Professional (PMP) certificate and relevant to the service to be performed) and/or licenses and when obtained (e.g., month and year)

Data to Exclude from a Personal Resume

To the extent possible, resumes should omit facts of a personal nature including, but not limited to:

- Home address, home telephone number, home or personal email address, personal cellular telephone number, driver's license number
- Social security number,
- Gender, marital status, number of children
- Age and date of birth,
- Race or ethnicity,
- Other personal facts including physical description, identification of spouse, religious affiliation, political affiliation, personal hobbies, description of state of health or medical condition, personal financial information or holdings, etc.

DHCS cannot ensure protection of any personal or confidential information included in a personal resume as all resumes become part of the public contract file.

DVBE Participation Confirmation

All certified small business, micro business, or DVBE Contractors, subcontractor or suppliers must meet the commercially useful function requirements, under Government Code Section 14837(d)(4) (for SB) and Military and Veterans Code Section 999(b)(5)(b) (for DVBE).

Please answer the following questions, as they apply to each DVBE subcontractor for the goods and services being acquired in this solicitation. Complete one form for each DVBE subcontractor.

Name of DVBE (as certified by DGS): _____

Mark all that apply: ☐ DVBE ☐ Small Business ☐ Micro Business Percent of DVBE Use Claimed: _____

1. Will the DVBE subcontractor be responsible for the execution of a distinct element of the services of the resulting contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Will the DVBE subcontractor be actually performing, managing, or supervising an element of the services of the resulting contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Will the DVBE subcontractor be performing work or supplying goods on the resulting contract that are normal for its business, services, and functions?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Will there be any further subcontracting by the DVBE subcontractor for the resulting contract that is greater than that expected to be subcontracted by normal industry practices?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. If providing goods, will the DVBE subcontractor be responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

A "No" response to questions 1-3 or 5, or a response of "Yes" to question 4 may result in the Respondent's proposal being deemed non-responsive and disqualified.

The Respondent must identify below the specific elements of the service description (i.e., tasks, activities, or functions) that will be performed by the DVBE subcontractor identified above. If goods will be obtained, only list the specific goods that will be utilized solely to perform the services sought in this solicitation and identify the service elements, tasks, activities, or functions for which the identified goods will be used. At its option, DHCS reserves the right to request the submission of additional clarifying information.

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An entry above imposes an obligation on the Respondent to use the identified DVBE to perform commercially useful functions for the percentage claimed. The budget/cost work sheets, if required, and submitted in an RFO response should include costs for the DVBE identified above.

This form may be photocopied or reproduced in a like form for inclusion in an RFO response. Responding firms that choose to render a like copy of this form by computer or other means may do so. This form must be completed by the Respondent.

Responding Firm's Name	Signature
Printed Name/Title of Person Signing Above	Date Signed

RESPONDENT / BIDDER DECLARATION

Exhibit 8

1. Prime bidder information (Review the instructions on Page 2 entitled Respondent / Bidder Declaration Instructions prior to completing this form):

1a. Identify current California certification(s): (**Check One**) ☐ **MB** ☐ **SB** ☐ **NVSA** ☐ **DVBE** or ☐ **None** (If "None", go to Item #2)

1b. Will subcontractors be used for this contract? ☐ **Yes** ☐ **No** (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, if necessary.

1c. If you are a California certified DVBE:

(1) Are you a broker or agent? **Yes** ☐ **No**

(2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? ☐ **Yes** ☐ **No** ☐ **N/A**

2. ☐ **No** subcontractors will be used. ☐ **Yes.** The proposed subcontractors for this contract are listed below. Attach additional pages if necessary.

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, NVSA, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?
		<input type="checkbox"/> MB <input type="checkbox"/> SB <input type="checkbox"/> NVSA <input type="checkbox"/> DVBE <input type="checkbox"/> None		%	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> MB <input type="checkbox"/> SB <input type="checkbox"/> NVSA <input type="checkbox"/> DVBE <input type="checkbox"/> None		%	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> MB <input type="checkbox"/> SB <input type="checkbox"/> NVSA <input type="checkbox"/> DVBE <input type="checkbox"/> None		%	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No

☐ **Certification:** By signing the price quote / bid response, I certify under penalty of perjury that the information provided is true and correct.

RESPONDENT / BIDDER DECLARATION Instructions

Exhibit 8

All prime respondents / bidders (entity submitting the price quote / bid) must complete this form.

- 1.a. Identify all current certifications issued by the State of California. If the prime respondent / bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime respondent / bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:

- Microbusiness (MB)
- Small Business (SB)
- Nonprofit Veteran Service Agency (NVSA)
- Disabled Veteran Business Enterprise (DVBE)

- 1.b. Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No", proceed to Item #1.c. If "Yes", enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime respondent / bidder. Do not include goods or services to be provided by subcontractors.

Respondents / Bidders certified as MB, SB, NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999 for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses.

Price Quotes / Bids received from certified firms must indicate that a commercially useful function for the resulting contract will be performed or the response/bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.

- 1.c. This item is only to be completed by businesses certified by California as a DVBE.

- (1) Declare whether the prime respondent / bidder is a broker or agent by marking either "Yes" or "No". The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

- (2) If responding to a bid for rental equipment, mark either "Yes" or "No" to identify if the prime respondent / bidder owns at least 51% of the equipment provided (quantity and value). If not responding to a bid for rental of equipment, mark "N/A" for "not applicable."

2. If no subcontractors are proposed, check the "No" box and do not complete the table. Read the certification at the bottom of the form and complete the pagination indicating "Page 1 of 1" on the form.

If subcontractors will be used, check the "Yes" box and complete the table listing all subcontractors. If necessary, attach additional pages and note the pagination "Page ___ of ___" on each page accordingly.

2. (continued) Column Labels

Subcontractor Name, Contact Person, Phone Number & Fax Number—List each element for all subcontractors.

Subcontractor Address & Email Address—Enter the address and if available, an Email address.

CA Certification (MB, SB, NVSA, DVBE or None)—If a subcontractor possesses a current State of California certification(s) mark the certs possessed & verify on this website (www.eprocure.pd.dgs.ca.gov).

Work performed or goods provided for this contract—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

Corresponding % of bid price—Enter the corresponding percentage of the total bid price / price quote for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

Good Standing?—Provide a response for each subcontractor listed. Check either "Yes" or "No" to indicate that the respondent has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, NVSA, and/or DVBE status

51% Rental?—This pertains only solicitation for equipment rental. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Check "N/A" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Check "Yes" if the subcontractor providing rental equipment is a California certified DVBE and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Check "No" if the subcontractor providing rental equipment is a California certified DVBE but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

Read the certification at the bottom of the page and complete the "Page ___ of ___" accordingly.

Follow-on Consultant Contract Disclosure**Background Information:**

1. PCC Section 10365.5 generally prohibits a person, firm, or subsidiary thereof that has been awarded a consulting services contract from submitting a bid for and/or being awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of a consulting services contract.
2. PCC Section 10365.5 does not apply to any person, firm, or subsidiary thereof that is awarded a subcontract of a consulting services agreement that totals no more than 10 percent of the total monetary value of the consulting services agreement.
3. Consultants/employees of a firm that provides consulting advice under an original consulting contract are not prohibited from providing services as employees of another firm on a follow-on contract, unless the persons are named contracting parties or named parties in a subcontract of the original contract.
4. PCC Section 10365.5 does not distinguish between intentional, negligent, and/or inadvertent violations. A violation could result in disqualification from bidding, a void contract, and/or imposition of criminal penalties.

Disclosure [Mark one (1) box]:

- ☐ I hereby certify that neither my firm nor any subcontractor that my firm intends to use under the contract resulting from this procurement, is currently providing consulting services to the state under a state contract (or as a subcontractor providing more than 10 percent of dollar value of a consulting service contract with the state) or has provided such services within five (5) years prior to the release of this DHCS IFQ that are related in any manner to the services, goods, or supplies being acquired pursuant to this DHCS IFQ. **[Sign below.] This option is likely to apply to bidding firms that do not currently and/or never have provided consultant services to the state.**
- ☐ Attached is a disclosure of current and/or prior consulting services provided by my firm or a proposed subcontractor to the state under a state contract within five (5) years prior to the release of this IFQ that may be related in some manner to the services, goods, or supplies being acquired pursuant to this IFQ. **[Sign below and attach to this document a detailed disclosure.]**

Name of Firm

Signature

Date Signed

Printed/Typed Name

Title

Disabled Veteran Business Enterprise Declarations

Respondent to download this form (if applicable) and fill out and include in offer as per instructions (see page 2 of the Notice to Prospective Respondents). This form can be downloaded at:

www.documents.dgs.ca.gov/pd/poliproc/STD-843FillPrintFields.pdf

CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. **CALIFORNIA CIVIL RIGHTS LAWS**: For contracts over \$100,000 executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and
2. **EMPLOYER DISCRIMINATORY POLICIES**: For contracts over \$100,000 executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

CERTIFICATION

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. <i>Proposer/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County and State of</i>	

RFO Attachments

STANDARD AGREEMENT

STD 213 (Rev. 10/2018)

AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER (if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

CONTRACTOR NAME

2. The term of this Agreement is:

START DATE

THROUGH END DATE

3. The maximum amount of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Scope of Work	
Exhibit B	Budget Detail and Payment Provisions	
Exhibit C *	General Terms and Conditions	

Items shown with an asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto.**These documents can be viewed at www.dgs.ca.gov/ols/resources/standardcontractlanguage.aspx**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.***CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

CONTRACTING AGENCY ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION, IF APPLICABLE

Scope of Work

1. Overview of the Description of the Goods and Services to be Provided

Contractor agrees to provide to the Department of Health Care Services (DHCS) the services described herein.

Contracted staff will act as the SCRUM Product Owner and Managed Care (MC) Subject Matter Expert (SME) in order to support the Health Insurance Portability and Accountability Act (HIPAA) Capitation Payment Management System (CAPMAN) maintenance and operations (M&O). The contracted staff will work closely with the project management and technical staff of the DHCS Office of HIPAA Compliance (OHC) to move from a waterfall/agile methodology to a full SCRUM methodology that will optimize performance of system maintenance and operations services in support of the CAPMAN 820/834 system. Contractor staff will be required to ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system. This includes insuring that modifications required by law, statute, or state policy due to the advent of health care reform and the Affordable Care Act are implemented.

2. Contract Term

The period of performance for this agreement is estimated to be on or about March 1, 2019 and continue for 24 months unless extended by an amendment (three (3) optional one (1) year extensions). DHCS reserves the right to amend the term of the Contract and applicable due dates, as needed, to ensure completion of the work effort.

3. Service Location

The services shall be performed at the OHC (1700 K Street) and in EITS (1501 Capitol Avenue) offices, both located in Sacramento, California.

4. Service Hours

The services shall be provided during the hours of 8:00 AM and 5:00 PM, excluding official holidays. There is some flexibility to begin work at 7:00 AM, upon management approval. Time off should be requested from the State Project Manager in advance, except in cases of illness or emergency. Unexpected time off should be documented or explained. Overtime or work on official holidays must be approved. Remote access is discouraged but may be granted upon approval on a case-by-case basis.

5. Project Representatives

A. The project representatives during the term of this agreement will be:

Department of Health Care Services	Contractor's Name [To Be Determined]
Contract Manager: Richard Ernst	[Name of Contractor's Contract Manager] [TBD]
Telephone: (916) 750-4652	Telephone: (XXX) XXX-XXXX [TBD]
Fax: (916) 449-5125	Fax: (XXX) XXX-XXXX [TBD]
Email: Richard.Ernst@dhcs.ca.gov	Email: [TBD]

B. Direct all inquiries to:

Department of Health Care Services	Contractor's Name [TBD]
Attention: Lauren Marks	Section or Unit Name, if applicable [TBD]
Administrative Operations Unit	
Mail Station Code 4722	Name: [TBD]
P.O. Box 997413	Street address [TBD]
Sacramento, CA, 95899-7413	P.O. Box Number [TBD]
	City, State Zip Code [TBD]
Telephone: (916) 750-4601	Telephone: [TBD]
Fax: (916) 449-5125	Fax: [TBD]
Email: Lauren.Marks@dhcs.ca.gov	Email: [TBD]

C. Either party may make changes to the information in Sections 4A or 4B above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

5. Services to be Performed

The Contractor is expected to work closely with management and technical staff of the DHCS, OHC, EITS, and other program area staff. This is a time and materials based contract, which includes specific work products and activities. The work products and activities are delineated.

Contractor staff will be required to ensure performance system monitoring, maintain the product backlog of unresolved issues, and order the items in the product backlog to best achieve the goals of the managed care payment system. This includes insuring that modifications required by law, statute, or state policy due to the advent of health care reform and the Affordable Care Act are implemented.

A. Project Background

The DHCS is requesting offers from qualified MSA contractors for a Managed Care (MC) SCRUM Product Owner and HIPAA Subject Matter Expert (SME). The MC SME will provide IT consulting services in support of the HIPAA CAPMAN system.

DHCS' OHC is responsible for guiding all the HIPAA-related compliance work throughout the Department. OHC provides oversight, coordination, resource procurement, project management support, and monitoring and control for HIPAA activities, within DHCS, through a centralized project management approach.

In the State of California there are over 10 million Medi-Cal beneficiaries enrolled in 175 managed care plans, with annual payments over \$40 billion. The CAPMAN 820/834 system supports federal regulations that require the State of California to maintain member benefit enrollment and accounting for all capitated payments made to managed health care plans.

HIPAA compliance requires that managed care plans receive a detailed remittance advice from the paying agency, reporting all beneficiaries and their associated payment amounts covered by the monthly capitation payments, as well as detailed enrollment information for all beneficiaries. The standard transactions which are used—820 and 834—are governed by Accredited Standards Committee (ASC) X12, chartered by the American National Standards Institute.

The HIPAA compliant CAPMAN system was successfully implemented for DHCS on July 1, 2011 (820) and January 1, 2012 (834), and is currently making capitated payments for the managed care plans and sending out daily and monthly enrollment files. The system is currently in maintenance and operations.

B. Staffing Requirements

The Contractor must be available onsite for the duration of the contract. The Contractor's primary workplace will be at the DHCS offices in Sacramento. The standard work week is defined as 40 hours, five days a week, Monday through Friday, except for state holidays. Travel will not be reimbursed.

Mandatory Qualifications:

As a minimum, the Contractor must meet the mandatory education and experience as listed below. Failure to meet these mandatory qualifications will result in the disqualification of the offer.

MANDATORY EXPERIENCE QUALIFICATIONS	
Refer to “Exhibit – Statement of Work” in the “Department of General Services (DGC) Request for Proposal for IT Consulting Services RFP 5167010” for duties/tasks, knowledge/skills, and abilities (KSAs)/competencies, experience and education requirements for a Senior Project Manager)	
DESIRABLE EXPERIENCE QUALIFICATIONS	
D1	Three (3) years of experience working as an IT Certified Product Owner/Project Manager leading teams with 10 or more people.
D2	Two (2) years of experience leading technical teams in the implementation of large-scale IT systems projects within the health-care industry.
D3	Project Management Institution (PMI) Project Management Professional (PMP) certification or equivalent. ¹
D4	Two (2) years of experience providing project management for one or more large-scale integration projects.
D5	Certification in Scrum Product Owner or Scrum Master.
D6	Six (6) months of experience in the practical application of Microsoft SharePoint.
D7	One (1) year of experience working with DHCS programs and organization.
D8	One (1) year of experience working with implementation of HIPAA transactions.
D9	One (1) year of experience working with Medi-Cal capitation rate structures.
D10	One (1) year of experience working with Medi-Cal eligibility data.
D11	Two (2) years of experience leading and organizing functional Scrum teams as either Product Owner or Scrum Master.
D12	Additional years of experience for mandatory experience qualifications.
D13	Additional years of experience for desirable experience qualifications.

¹ The State will accept the following PMI PMP-certification equivalent: Three (3) years of experience on projects utilizing Project Management Body of Knowledge (PMBOK) standards and processes **and/or** three (3) years of experience on projects utilizing Systems Development Life Cycles (SDLCs) as this applies to large-scale computer system design and/or implementation.

C. Contractor Tasks and Responsibilities

At DHCS' direction, the Contractor will be required to perform the following services:

A. Certified Product Owner Tasks and Activities

1. The Certified Product Owner shall lead a team of 10-14 business analysts/testers and 6-8 developers who are independent contractors using SCRUM methodologies.
2. The Certified Product Owner is responsible for ordering items in the product backlog and ensuring that the team of independent contractors understands the items in the product backlog in order to appropriately assign work.
3. The Certified Product Owner shall maintain the product backlog schedule and hold the independent contractors to that schedule.
4. The Certified Product Owner shall be responsible for working with the State Project Manager and stakeholders to identify the product backlog order and provide a level of effort for analysis, development, testing, and implementation.
5. The Certified Product Owner shall follow the change control process in place for the CAPMAN project in ordering the product backlog and working with the State Project Manager and the independent contractors to schedule the change requests and bug fixes.
6. The Certified Product Owner will ensure that the product backlog is visible, transparent, and clear to all stakeholders, showing which items the SCRUM team will work on next.
7. The Certified Product Owner shall use and maintain the Issue Tracker on CAPMAN SharePoint to order the product backlog, which will be comprised of the defects/change requests.
8. The Certified Product owner will track the product backlog items through to completion following the change control process.
9. The Certified Product Owner shall generate the reports from Issue Tracker on SharePoint for all meetings with the CAPMAN users and provide status to the users for each issue in these meetings.
10. The Certified Product Owner shall work as a customer liaison and provide support to stakeholders who have questions or who have experienced problems with system functionality, system navigation, or related system elements, including telephone, email and other communication methods,

and shall input requests for support into a Problem Backlog, resolve problems, and provide reports on the status and resolution of requests.

11. The Certified Product Owner shall evaluate the current business processes followed for documenting the requirements, suggest improvements and make sure the documentation (business and technical) follows the SCRUM methodology and is up-to-date with all the requirements documented and stored in one central repository (SharePoint).
12. The Certified Product Owner shall ensure the knowledge transfer of System features and functions is provided to internal DHCS staff and external parties on an active, ongoing, and daily basis. Knowledge transfer activities will include shadowing by State staff of independent contractor staff, to understand the proper methodology to interact with the system in their respective roles. The goal of the knowledge transfer task is to train the State in the skills, methods and technologies to maintain and use the CAPMAN system.
13. The Certified Product Owner shall submit the business analysis/requirements documents for review of the CAPMAN state staff and approval of the OHC Project Manager prior to review by program staff.
14. The Certified Product Owner shall submit the following for review by the CAPMAN state staff and approval by the OHC Project Manager prior to creating the release package on the quality assurance (QA) environment:
 - a. Release Test Plan and Schedule showing a list of test scripts, resource assignments and targeted dates.
 - b. Release Schedule with a list of changes/fixes to be included in a release with resource assignments, level of efforts and targeted QA, Staging and Production deployment dates.
15. The Certified Product Owner shall submit the following for review by the CAPMAN state staff and approval of the OHC Project Manager prior to deploying the release package on Staging environment:
 - a. Updated Business Documentation
 - b. Updated Technical Documentation – build docs, System Design doc etc.
 - c. Test Results
 - d. Release Notes
16. The Certified Product Owner shall have the independent contractors present the System design approach to the CAPMAN state staff prior to

the start of coding effort and perform code walkthrough after the code is deployed to Staging.

17. The Certified Product Owner shall have the independent contractors perform the user acceptance testing with the CAPMAN state staff for the release along with performing test script walkthrough after the release package is deployed to Staging.
18. The Certified Product Owner shall receive the absence requests from the independent contractors and submit them to the State Project Manager for approval before the absence request is granted.
19. The Certified Product Owner shall receive notifications from the independent contractors about any delays in reporting to work and/or any emergencies and in turn notify the State Project Manager immediately
20. The Certified Product Owner shall update the SharePoint PTO calendar with all Contractor absences.
21. The Certified Product Owner shall develop system management reports, including but not limited to, reports of processing performance and file storage usage.
22. The Certified Product Owner shall ensure that the independent contractors establish, use, document, and otherwise maintain industry-standard best practices, techniques, and tools, ensuring all DHCS standards and policies are adhered to.
23. The Certified Product Owner is responsible for oversight of all transition activities to be performed by the independent contractors, including the submission of the Transition Work Plan including pre-transition activities, transition activities and post-transition activities.
24. The Certified Product Owner is responsible for providing informal daily status updates to the State Project Manager and formal weekly status reports in hard copy and electronic format using MS Word and Outlook. Weekly status reports will be due each Friday before 2:00 p.m.
25. The Certified Product Owner shall contribute to project plans and develop and analyze schedules along with any work breakdown structure format for DHCS related projects.
26. The Certified Product Owner shall provide reports, diagrams, tables and analysis, as required.

27. The Certified Product Owner shall coordinate and collaborate with CAPMAN team and stakeholders on CAPMAN efforts to meet business needs.
28. The Certified Product Owner shall coordinate project activities with an emphasis on quality and meeting timelines, ensuring successful implementations.
29. The Certified Product Owner shall maintain awareness of project status, identifying conflicts and proactively communicating them to the appropriate individuals/program(s).
30. The Certified Product Owner shall track capitation metrics and in coordination with the State Project Manager provide quality assurance measurements for monthly reporting.
31. The Certified Product Owner shall perform Business Process Modeling on a multitude of processes including CAP-Reconciliation processes, so that current processes can be analyzed, improved, and automated where possible.

B. Documentation Standards and Updates to Documentation

Contractor-generated written reports and correspondence shall use the MS Office project management, word processing, presentation, and spreadsheet products in use by the State, at the version levels specified by the State. Development and maintenance of all system documentation shall be in Microsoft Word, Excel, and Visio, as applicable. The Contractor shall transfer created or updated documents to DHCS for online conversion to PDF and/or hypertext markup language (HTML), as needed to be available for downloading.

C. Calendaring and Scheduling of Meetings

All meetings shall be scheduled using the DHCS Microsoft (MS) Outlook. All Contractor staff shall maintain their schedules of availability on their DHCS MS Outlook calendars.

D. Time Reporting

Contractor staff hours must be logged and reported using the OHC HIPAA Time system. The Contractor shall collect the timesheets from the team of independent contractors, verify the accuracy of the timesheets and submit them to the State Project Manager.

Note: Additional Contractor responsibilities appear in Section VI, "Responsibilities of the Parties".

D. Recommended Core Staffing

DHCS one resource, for a period of 36 months, to perform the activities described herein.

The Contractor shall provide staffing necessary to accomplish the tasks and perform the functions identified in this SOW, within the timeframe specified in this contract. The Contractor's staff must be qualified to perform the duties identified in this SOW and in the IT MSA experience requirements for the staff role bid. Any Contractor staffing changes made after project start date must be agreed upon in advance by the DHCS Contract Manager.

E. Responsibilities Of Parties

The following section describes specific responsibilities of the Contractor and DHCS.

Contractor responsibilities:

- All meetings shall be scheduled using the DHCS MS Outlook. All Contractor staff shall maintain their schedules of availability on their DHCS MS Outlook calendars.
- The Contractor shall designate a person to whom all project communications may be addressed and who has the authority to act on all aspects of the contract for services. This person shall be responsible for the overall project and shall be the contact for all invoice issues and Contractor staffing issues.
- The Contractor shall comply with all applicable DHCS, DGS, Department of Finance, and the Office of the Chief Information Officer policies and procedures, including but not limited to policies regarding Sexual Harassment Prevention, Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, IT Security, Workplace Violence Prevention, and Emergency Preparedness. Each of the Contractor's staff shall complete a Form 700 (see the California Fair Political Practices Commission website at www.fppc.ca.gov).
- Written reports will be subject to review and approval by DHCS and the Contractor will be required to formally respond to DHCS review results. Payment to the Contractor will be contingent upon final approval of each written deliverable.
- The Contractor will make his/her best efforts to maintain staff continuity throughout the life of the work effort. DHCS will be notified, in writing, of any changes in the personnel assigned to tasks. If a Contractor employee is unable to perform his or her duties due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel. The substitute personnel must meet all

requirements of this RFO and SOW and must be approved by DHCS in writing prior to initiating work. Substitute personnel shall not automatically receive the hourly rate of the individual or position being replaced. The contract manager and the Contractor shall negotiate the hourly rate of any substitute personnel to the agreement. The hourly rate negotiated shall be dependent, in part, upon the experience and individual skills of the proposed substitute personnel. The negotiated rate cannot exceed the hourly rate stated in the purchase order.

- The Contractor should expect to provide draft documents and to incorporate, as appropriate, comments provided by the DHCS. The Contractor should plan to meet with DHCS stakeholders to discuss the draft and final documents.
- The Contractor is responsible for his/her own operating expenses, overhead and clerical support.

DHCS responsibilities:

- DHCS will provide office space for the duration of the agreement including: desk, chair, telephone, PC, internet connection, card keys, and access to printer, copier and fax services.
- The DHCS Contract Manager is the contact person to whom all Contractor communications may be addressed and who has the authority to act on all aspects of the services. This person will review the agreement and associated documents with the Contractor to ensure understanding of the responsibilities of both parties.
- DHCS will provide sufficient access to appropriate levels of staff, business representatives, other users, and department management, as appropriate to facilitate the performance of consulting tasks and creation of consulting deliverables.
- DHCS will provide timely review and approval of the draft and final documents and deliverables provided by the Contractor in order for the Contractor to perform its obligations under the agreement.
- DHCS will provide payments based upon the receipt of undisputed invoices and on the submission and approval of timesheets based on cost per hour as identified in the Cost Data Sheets (See Exhibit 1).

F. Progress Report Requirements

The Contractor shall prepare and submit a monthly status report, in a format specified by the DHCS contract manager that includes a description of the specific services performed by each resource, planned accomplishment for the coming month, a list of all activities currently assigned, and any issues.

G. Travel Expectations/Requirements

All work will be performed at DHCS offices in downtown Sacramento; no travel is required.

H. Performance Acceptance Criteria

In advance of the development work for each component, the contractor will work closely with DHCS to identify, agree upon, and document clear and testable success criteria, and subsequently evaluate each delivered component against those criteria.

6. Contract Performance

DHCS will be the sole judge of the acceptability of all work performed and all work products produced by the Contractor as a result of this SOW. Should the work performed or the products produced by the Contractor fail to meet minimum DHCS' conditions, requirements or other applicable standards, specifications, or guidelines, the following resolution process will be employed except as superseded by other binding processes:

- A. DHCS will notify the Contractor in writing within five (5) business days after discovery of any acceptance problems by identifying the specific inadequacies and/or failures in the services performed and/or the products produced by the Contractor.
- B. The Contractor will, within five (5) business days after initial problem notification, respond to DHCS by submitting a detailed explanation describing precisely how the identified services and/or products actually adhere to and satisfy all applicable requirements, and/or a proposed corrective action plan to address the specific inadequacies and/or failures in the identified services and/or products.
- C. DHCS will, within five (5) business days after receipt of the Contractor detailed explanation and/or proposed corrective action plan, notify the Contractor in writing whether it accepts or rejects the explanation and/or plan. If DHCS rejects the explanation and/or plan, the Contractor will submit a revised corrective action plan within three (3) business days of notification of rejection.
- D. DHCS will, within three (3) business days of receipt of the revised corrective action plan, notify the Contractor in writing whether it accepts or rejects the revised corrective action plan proposed by the Contractor.

7. Performance Evaluation

- A. The Contractor's performance under this Agreement shall be evaluated at the conclusion of the term of this Agreement. The evaluation shall include, but not be limited to:

- i) Whether the Contracted work or services were completed as specified in the Agreement and reasons for and amount of any cost overruns.
- ii) Whether the Contracted work or services met the quality standards specified in the Agreement.
- iii) Whether the Contractor fulfilled all requirements of the Agreement.
- iv) Factors outside the control of the Contractor, which caused difficulties in contractor performance. Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.

B. The evaluation of the Contractor shall not be a public record.

8. Progress Reports or Meetings

- A. Contractor shall submit progress reports or attend meetings with state personnel at intervals determined by DHCS to determine if the Contractor is on the right track, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.
- B. At the conclusion of this Agreement and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this Agreement, Contractor shall submit a comprehensive final report.

9. Unanticipated Tasks

- A. In the event unanticipated or additional work must be performed that is not identified in DHCS' RFO or in the Respondent's Statement of Work, but in DHCS' opinion is necessary to successfully accomplish the project goals, DHCS may (if applicable) initiate a contract amendment to specify the unanticipated services. The wage rate applicable to the Unanticipated Cost category appearing in the Respondent's Cost Worksheet Form will apply to any additional work and/or term extension.
- B. DHCS and Contractor agree to use the Work Authorization process described in the Information Technology Personal Services Special Provisions attachment appearing in the Contractor's Master Agreement with DGS for the consideration and approval of unanticipated work.
- C. Work Authorizations shall contain at a minimum, a task description, deliverables (if any), performance time line, projected number of labor hours, job classification(s), hourly rate, total cost. Work Authorizations must be pre-approved by DHCS before any work commences.

10. Equipment Requirements

All contract work for CAPMAN shall be carried out on DHCS-owned equipment.

11. Software Requirements

All contract work for the CAPMAN system shall be carried out using DHCS-owned or DHCS licensed software.

12. Contractor Work Requirements

Services shall be performed at the times and location specified in Attachment 10, Work Policies for Private-Sector Contracted Employees, Office of HIPAA Compliance.

13. Monthly Time Reporting

Contractor staff will report their time worked using the Office of HIPAA Compliance's tool, the HIPAAtime system.

14. Ownership of Products

Refer to the "Rights in Work Product" section of the MSA General Provisions for Information Technology. DHCS will retain ownership rights of all documents, procedures, etc., including software or modifications thereof and associated documentation designed, developed, or installed that the contractor develops while under contract with DHCS.

15. Conflict of Interest

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

A. Current State Employees (Public Contract Code §10410):

- i. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
- ii. No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

B. Former State Employees (Public Contract Code §10411):

- i. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- ii. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving state service.

C. If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void (Public Contract Code §10420).

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem (Public Contract Code §10430 (e)).

16. Americans with Disabilities Act

Contractor agrees to ensure that deliverables developed and produced, pursuant to this Agreement shall comply with the accessibility requirements of **Section 508 of the Rehabilitation Act and the Americans with Disabilities Act of 1973** as amended (29 U.S.C. § 794 (d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations. In 1998, Congress amended the **Rehabilitation Act of 1973** to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code section 11135 codifies section 508 of the Act requiring accessibility of electronic and information technology.

Attachment 1A**Statement of Work**

This page is intentionally blank and serves as a placeholder for the winning Respondent's Statement of Work. The final product will be re-labeled and reformatted to match DHCS contract requirements.

Attachment 2

Payment Provisions and Cost Worksheets

1. Payment Related Terms in this Agreement

The provisions in this attachment supplement and/or supersede, where indicated below, the payment related and/or invoice terms appearing in the Department of General Services' (DGS) Information Technology General Provisions (GSPD 401IT) and/or one or more General Services' Special Provision exhibits identified below. The Contractor shall comply with the various payment and invoice related provisions located in the applicable attachments and exhibits incorporated into this Agreement and those appearing in the Master Agreement entered into with DGS. Said payment and invoice provisions may include, at a minimum, the provisions identified herein.

Supplements / Supersedes	Exhibit Source – Provision Title	Clause #	Basic Description of Provision Content
	GSPD 401 IT – Transportation Costs and Other Fees or Expenses	13	Allowable delivery, shipping, parcel, post, packing, and freight charges or fees.
	GSPD 401 IT – Termination for Non-Appropriation of Funds	21	Budget contingency conditions and affect on services and deliverables if funds are not appropriated in future years of multi-year contracts.
	GSPD 401 IT – Termination for the Convenience of the State	22 (b) (iv)	Settlement of amounts payable following termination for convenience by the State
	GSPD 401 IT – Termination for the Default	23	Settlement of amounts payable following termination for default by Contractor.
	GSPD 401 IT – Rights and Remedies of State for Default	25	Contractor expenses resulting from termination for default by Contractor.
	GSPD 401 IT – Limitation of Liabilities	26	Contractor's liability for damages to the State.
Attachment 2 Provision 2 herein supersedes this item	GSPD 401 IT – Invoices	29	Identifies invoicing instructions.
	GSPD 401 IT – Required Payment Date	30	Prompt payment requirements
	GSPD 401 IT – Taxes	31	Identifies allowable taxes eligible for reimbursement

Attachment 2
Payment Provisions and Cost Worksheets

Supplements / Supersedes	Exhibit Source – Provision Title	Clause #	Basic Description of Provision Content
	Personal Services Special Provisions – Invoicing and Payment for Services	5	Application of 10% payment withhold to invoices for service and task orders.
	IT Software Special Provisions - Fees and Charges	3	Software license fees
	Attachment 6 – IT Federal Contract Terms	2	Terms relevant to federal contract funds

2. Reimbursement Conditions

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, DHCS agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein not to exceed the maximum amount payable.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Thomas Nulk
Department of Health Care Services
Office of HIPAA Compliance
MS Code 4722
P.O. Box 997413
Sacramento, CA 95899-7413

DHCS, at its discretion, may designate an alternate invoice submission address. A change in the invoice address shall be accomplished via a written notice to the Contractor by DHCS and shall not require an amendment to this Agreement.

C. Invoices shall:

- 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this Agreement.
- 2) Bear the Contractor's name as shown on the Agreement.
- 3) Identify the billing and/or performance period covered by the invoice.
- 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this Agreement. Subject to the terms of this Agreement, reimbursement may only

Attachment 2

Payment Provisions and Cost Worksheets

- be sought for those costs and/or cost categories expressly identified as allowable in this Agreement and approved by DHCS.
- 5) Report expenses attributed to DVBE subcontractors or DVBE suppliers at any tier.

D. Rates Payable

The Contractor will be reimbursed according to the rate schedule appearing in the incorporated Cost Worksheet(s) and the terms herein and in accordance with the applicable payment terms appearing in the Master Agreement between the Contractor and the Department of General Services (DGS).

3. Amounts Payable

- A. Reimbursement shall be made for allowable expenses accruing to the applicable state fiscal year in which services are performed and/or goods are received.
- B. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this Agreement.

4. Progress Payment Withholds

This option may apply if it's determined the service type is not subject to payment withholds.

Payment withholds do not apply if no progress payments are made e.g., the Agreement term is less than 3 months or payments are made on a lump sum or fixed price basis at the end of the agreement term after all deliverables are received and performance is deemed satisfactory. Unless one of these conditions or a similar condition applies, payment withhold language may not be deleted or excluded from an Agreement. Before choosing this option, discuss your situation with CMU, as it is rare for this option to apply to a consultant agreement. Payments made under this Agreement are considered periodic payments and are not subject to payment withholds.

5. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by DHCS, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to DHCS upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by DHCS. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

Attachment 2

Payment Provisions and Cost Worksheets

6. Prohibited Use of State Funds for Software

By signing this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.
 - a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the Contractor.
 - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **"Buyer"** means the State's authorized contracting official.
 - f) **"Commercial Hardware"** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - g) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - h) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - i) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - j) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - k) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - l) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
 - m) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - n) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - o) **"Documentation"** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
 - p) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
 - q) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
 - r) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
 - s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
 - t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
 - u) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
 - v) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
 - w) **"Machine"** means an individual unit of a Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
 - x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
 - y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
 - z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
 - aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
 - bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

2. CONTRACT FORMATION:

- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with

Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.

- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
 - c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
 4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
 5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
 6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
 7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
 - a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
 - b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
 - d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
 - e) To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

its attention, regarding accessibility of its products or services.

- 8. CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- 9. ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.

- 10. WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

- 11. ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein;
- e) Cost worksheets; and
- f) All other attachments incorporated in the Contract by reference.

12. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.

- b) All shipments by the Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

- 14. DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.

- 15. SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16. INSPECTION, ACCEPTANCE AND REJECTION: Unless otherwise specified in the Statement of Work:

- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.

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- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source..
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

17. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor's expense.

18. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right.

Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.

- c) Unless otherwise specified in the Statement of Work:
 - (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.
 - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and the Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. SAFETY AND ACCIDENT PREVENTION: In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20. INSURANCE: The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

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- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
- c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - (i) Stop work as specified in the Notice of Termination.
 - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:
 - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto,

but excluding any cost attributable to Deliverables or services paid or to be paid;

- B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
- C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
 - (i) completed Deliverables,
 - (ii) partially completed Deliverables, and,
 - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

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- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. FORCE MAJEURE: Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations" (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the

Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that the Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor's liability for such damages arises out of subsection b)(i), b)(ii), or b)(iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. INDEMNIFICATION: The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

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- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. DOCUMENTATION:**
- The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
 - If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.
- 37. RIGHTS IN WORK PRODUCT:**
- All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's State's exclusive property. The State shall retain all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation as required by subdivision (a) of 45 CFR 95.617. The U.S. Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish and otherwise use and to authorize others to use for Federal Government purposes such software, modifications and documentation as required by subdivision (b) of 45 CFR 95.617. Proprietary operating/vendor software packages which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in required by subdivisions (a) and (b) of 45 CFR 95.617. The provisions of this sub-section a) may be revised in a Statement of Work.
 - Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor's or its affiliates' ownership of Pre-Existing Materials.
 - ~~The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.~~
 - The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
 - This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
- 38. SOFTWARE LICENSE:** Unless otherwise specified in the Statement of Work and subject to the Federal Government purposes provisions in Provision 37 sub-section a), the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to

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use the Software Products in this Contract (hereinafter referred to as "Software Products").

- a) The State may use the Software Products in the conduct of its own business, and any division thereof
- b) The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.

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- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. RIGHT TO COPY OR MODIFY:

- a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior written consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
- b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.

41. FUTURE RELEASES: Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the

Contractor will provide all codes to the State with delivery of the Software.

- b) In case of an inoperative CPU, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, Federal Government, their officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State and Federal Government such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State and Federal Government with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:

- (i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- (ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such

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infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the contracting Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.

- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of the Contractor's appeal for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- e) The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

46. EXAMINATION AND AUDIT: The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.

47. FOLLOW-ON CONTRACTS:

- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors

by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

48. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

49. COVENANT AGAINST GRATUITIES: The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

50. NONDISCRIMINATION CLAUSE:

- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

52. ASSIGNMENT OF ANTITRUST ACTIONS:

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall

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be made and become effective at the time the State tenders final payment to the supplier.

- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION: The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

54. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

55. SWEATFREE CODE OF CONDUCT:

- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

- b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).

56. RECYCLED CONTENT REQUIREMENTS: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

57. CHILD SUPPORT COMPLIANCE ACT: For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

58. AMERICANS WITH DISABILITIES ACT: The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

59. ELECTRONIC WASTE RECYCLING ACT OF 2003: The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

60. USE TAX COLLECTION: In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

61. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.

62. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.

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63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

64. LOSS LEADER: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b)).

Attachment 4
Agency Special Provisions

1. Amendment Process

Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by both parties and approved by the Department of General Services (DGS) if such approval is required.

2. Cancellation / Termination Provisions in this Agreement

The Contractor shall comply with the various cancellation and termination related provisions located in the applicable attachments incorporated into its Master Agreement with the Department of General Services. Said cancellation and termination related provisions include, at a minimum, the provisions identified herein. Cancellation and/or termination notices shall be directed to the respective Agreement Representatives of both parties at the respective addresses.

Exhibit Source in Master Agreement with DGS – Provision Title	Clause #	Basic Description of Provision Content
(GSPD 401 IT) Termination for Non-appropriation of Funds	21	Budget contingency conditions and affect on services and deliverables if funds are not appropriated in future years of multi-year contracts.
(GSPD 401 IT) Termination for Convenience of the State	22	Stipulates the State's rights to cancel the agreement in whole or part upon notice; indicated Contractor requirements upon notice, and outlines payment settlement issues.
(GSPD 401 IT) Termination for Default	23	Stipulates the State's rights to terminate the agreement immediately for default and addresses settlement of amounts payable following termination for default

3. Dispute Resolution Process

- A. This provision supplements and is in addition to provision #44 entitled, "Disputes" appearing in the document entitled, "General Provisions – Information Technology" that is incorporated into the Contractor's Master Agreement with DGS. Steps B1) through B3) of this provision are to be followed prior to initiating the process described in Provision #44 entitled, "Disputes".
- B. If a dispute arises between the Contractor and DHCS, the Contractor must seek resolution using the process outlined below. DHCS may, at its discretion, waive a specific step outlined herein to progress settlement to the next appropriate level.

Attachment 4
Agency Special Provisions

- 1) The Contractor should first informally discuss the problem with the DHCS program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.
- 2) When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. Should the Contractor disagree with the Deputy Director's decision or his/her designee's decision, the Contractor may appeal to the next level.
- 3) If the dispute persists, Contractor shall submit to DHCS' Director or designee a written demand for a final DHCS decision regarding the disposition of the grievance or dispute. The written demand must indicate the reasons for disagreement with the Deputy Director's decision or that of his/her designee, attaching to it the Contractor's original statement of dispute along with any supporting evidence and a copy of the Deputy Director's decision or that of his or her designee.
- 4) There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.
- 5) If the Contractor is not satisfied with the decision of DHCS' Director or designee, the Contractor may appeal DHCS' decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology services and/or goods, the decision may be appealed to an Executive Committee of State and Contractor personnel. See provision #44(a) entitled, "Disputes" appearing in "General Provisions Information Technology" for additional information.

Attachment 4
Agency Special Provisions

4. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- A. With the exception of subcontractors identified in an RFO response, prior DHCS authorization will be required before the Contractor delegates contract services to a subcontractor.
 - 1) When applicable, the Contractor must provide in its request for authorization, all particulars necessary for evaluating the necessity and desirability of acquiring a subcontractor.
 - 2) The State may identify the information needed to fulfill this requirement.
- B. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make said copies available for approval, inspection, or audit.
- C. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- D. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement and in the attachments incorporated by reference.
- E. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- F. DHCS assumes no responsibility for making payment to any subcontractor used in performance of this Agreement. Contractor accepts sole responsibility for the payment of all subcontractors used in performance of this Agreement.
- G. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

“(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records.”

Attachment 4
Agency Special Provisions

5. Insurance Requirements

[Applicable to agreements involving the performance of work on property in the care, custody or control of the State.]

Contractor shall comply with the following insurance requirements:

A. This provision supplements and is in addition to provision #20 entitled, “Insurance” appearing in Attachment 3, entitled, “General Provisions - Information Technology” – GSPD-401IT.

B. Commercial General Liability

The Contractor must furnish to DHCS a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor’s limit of liability.

C. The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.

D. The certificate of insurance must include the following provisions:

- 1) The insurer will not cancel the insured’s coverage without giving 30 days prior written notice to the California Department of Health Care Services, and
- 2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.

E. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the agreement or for a period of not less than one year. DHCS may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval.

Attachment 4
Agency Special Provisions

- F. DHCS will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

Prime Contractor's Form Completion Instructions (Page 1 Only)

GENERAL INFORMATION: Military and Veteran Code (MVC) 999.5(d), Government Code (GC) 14841, and California Code of Regulations (CCR) 1896.78(e) requires all Prime Contractors that had a Disabled Veteran Business Enterprise (DVBE) perform an element of work for a contract to report DVBE information.

Prime Contractors are required to maintain records supporting the information submitted on this form and that all payments to DVBE subcontractor(s) were made.

INCLUDE

- **ONLY ONE contract per Report**
- **All DVBEs that performed an element of work for this contract regardless of tier**

HEADER

Contract Number: Enter the Contract Number

Prime Contractor: Enter the Prime Contractor's name as shown on the contract

FEIN Number: Enter only the **last four digits** of the Federal Employer Identification Number (FEIN) or the Social Security Number (SSN)

Phone Number: Enter the phone number (with area code) of the Prime Contractor

Address: Enter the address of the Prime Contractor

Department: Enter the state department name/contact phone #/ mailing address/ email address

Date Contract Entered: Enter the date contracted was signed

Date Contract Completed: Enter the date contracted work was completed

Date Final Payment Received: Enter the date the **final** payment for work performed was received by the Prime Contractor

Contract Award Amount: Enter the total dollar amount awarded to the Prime Contractor for this contract including all financial amendments

Contract Received Amount: Enter the dollar amount received by the Prime Contractor for this contract

TABLE

DVBE Subcontractor(s) Name: Enter the name of all DVBEs that are listed to perform an element of work or supplies for this contract and any formal approved substitution(s). (Use additional lines if the name does not fit on a single line) All DVBE substitutions must be approved by DGS' Office of Small Business & DVBE Services (MVC § 999.5(e)). Use the next tab for additional lines on the form

DVBE Subcontractor(s) Address: Enter the address of each DVBE (Use additional lines if address does not fit on a single line)

Supplier Number: Enter each DVBE's supplier/certification number

Total Contracted Amount to DVBE: Enter the entire amount contracted to each DVBE

Total Payment Amount to DVBE: Enter the total amount paid to all DVBEs that performed an element of work or were suppliers for this contract

Difference: The system will compute the difference of DVBE dollars contracted compared to dollars paid

SIGNATURE BLOCK

Prime Contractor's Signature: Prime Contractor's printed name, title, signature, and date

Pursuant to PCC 10369, you must submit this completed report to the awarding department/entity listed in the header within 60 days of receipt of final payment.

Prime Contractor's Form Completion Instructions (Page 1 Only)

DEPARTMENT ONLY INSTRUCTIONS

Prime Contractor Forms do NOT need to be sent when utilizing Department of General Services (General Services) Statewide Commodity Contracts, DVBE subcontracting information for those contracts are collect by General Services.

Departments are responsible for sending and collecting this form even when General Services or another department conducts procurement on your behalf.

The following items need to be filled out by the department prior to EMAILING the form to the Prime Contractor.

The awarding department's completion of this information prior to issuing this form to prime contractors ensures that all DVBE subcontractor activities are reported for DVBEs resulting in the award.

HEADER

Contract Number: Enter the Contract Number

Prime Contractor: Enter the Prime Contractor's name as shown on the contract

Department: Enter the state department/entity name

Date Contract Completed: Enter the date contracted work was completed

Contract Award Amount: Enter the total dollar amount paid to the Prime Contractor for this contract including all financial amendments

TABLE

DVBE Subcontractor(s) Name: Enter the name of all DVBEs that are listed to perform an element of work or supplies for this contract and any formal approved substitution(s). All DVBE substitutions must be approved by the Office of Small Business & DVBE Services, effective (MVC § 999.5(e)). Use the next tab for additional lines on the form

DVBE Subcontractor(s) Address: Enter the address of each DVBE

Supplier Number: Enter each DVBE's supplier/certification number

Total Contracted Amount to DVBE: Enter the entire amount contracted to each DVBE

Attachment 6. IT Federal Terms and Conditions

Federally Funding

Submission of a proposal in response to this RFO will constitute acceptance to IT Federal Terms and Conditions including, but not limited to, Exhibits 1 and 2 of this Attachment 6.

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

Index of Terms and Conditions

1. Federal Equal Employment Opportunity Requirements
2. Federal Contract Funds
3. Subcontract Requirements
4. Air or Water Pollution Requirements
5. Debarment and Suspension Certification
6. Use of Small, Minority Owned and Women's Businesses
7. Procurement Rules
8. Alien Ineligibility Certification
9. Warranty Against Payment of a Broker's Fee
10. Public Communications
11. Lobbying Restrictions and Disclosure Certification

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements.)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the Federal Equal Opportunity Requirements and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal

Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.

- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to DHCS by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

3. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) DHCS may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

- (a) A local governmental entity or the federal government,
- (b) A State college or State university from any State,
- (c) A Joint Powers Authority,

- (d) An auxiliary organization of a California State University or a California community college,
- (e) A foundation organized to support the Board of Governors of the California Community Colleges,
- (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
- (g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,
- (h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.2. View this publication at the following Internet address:
<http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>.

b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

(1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.

e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.

f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

- i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

4. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt by law.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act 42 USC 7606], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

5. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to (2 CFR 180, 2 CFR 376)
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment

- rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) or private transaction or contract; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
- (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
- (5) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.
- (6) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
- (7) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS program funding this Contract.
- d. The terms and definitions herein have the meanings set out in 2 CFR Part 180 as supplemented by 2 CFR Part 376.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

6. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

7. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the DHCS Asset Management Unit's Minor Equipment List and is either furnished by DHCS or the cost is reimbursed through this Agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the DHCS Program Contract Manager.
 - (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by DHCS or the cost is reimbursed through this Agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.
- b. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.
- (1) Equipment purchases shall not exceed \$50,000 annually.
- To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment purchased through DHCS' Purchasing Unit. The cost of equipment purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment specifications for those items that DHCS must procure. DHCS may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with DHCS. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.
- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
 - (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.

- (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
- (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- c. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- d. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.
- e. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- f. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- g. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b

of Provision 6 by giving the Contractor no less than 30 calendar days' written notice.

8. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

9. Warranty Against Payment of a Broker's Fee

The Contractor (or any of its officers, director or employees) agrees it has not employed any broker or finder or incurred any liability for any brokerage fee, commission or finder's fee (or similar fees, commission or reimbursement expenses) in connection with the transactions contemplated by this Contract.

10. Public Communications

Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

- A. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices.

11. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 6 (Exhibit 1), consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 6 (Exhibit 2), entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that

contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a (2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Attachment 6. IT Federal Terms and Conditions**Exhibit 1
California Department of Health Care Services****Certification Regarding Lobbying**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor

Printed Name of Person Signing for Contractor

Contract / Grant Number

Signature of Person Signing for Contractor

Date

Title

After execution by or on behalf of Contractor, please return the completed certification to the address for the applicable contract representative identified in the Statement of Work.

Attachment 6. IT Federal Terms and Conditions

Exhibit 2
CERTIFICATION REGARDING LOBBYING

by OMB

Approved

0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-

(See reverse for public burden disclosure)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known: Congressional District, If known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, If known:	
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10.a. Name and Address of Lobbying Registrant <i>(If individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from 10a. (Last name, First name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. required disclosure shall be subject to a not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only		Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)

CERTIFICATION REGARDING LOBBYING**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF - LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CDFA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action

identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the Contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."

9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
- 10.(a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
- 10.(b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials, identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and renewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

Resumes

This page is intentionally blank and serves as a placeholder for the Resumes of the winning Respondent's personnel. The final product(s) or resumes will be re-labeled and reformatted to match DHCS contract requirements.

The Respondent's resume development instructions appear in Exhibit 5 of the RFO.

Contractor's Release

Attachment 8

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the Department of Health Care Services (DHCS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHCS or purchased with or reimbursed by contract funds)

Unless DHCS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHCS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHCS, at DHCS' expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING IT TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

Distribution: Accounting (Original) Program

HIPAA Business Associate Addendum

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the HITECH Act), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act, and the Final Omnibus Rule as well as the Alcohol and Drug Abuse patient records confidentiality law 42 CFR Part 2, and any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.

HIPAA Business Associate Addendum

- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.

HIPAA Business Associate Addendum

- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act, and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, the HIPAA regulations, the Final Omnibus Rule and 42 CFR Part 2.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - a. **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
 - b. **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHCS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHCS.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DHCS and as permitted by 42 U.S.C. section 17935(d)(2).

HIPAA Business Associate Addendum

C. Responsibilities of Business Associate

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.
3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHCS.

HIPAA Business Associate Addendum

D. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. *Business Associate's Agents and Subcontractors.*

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business associates are directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.
2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. *Availability of Information to DHCS and Individuals.* To provide access and information:

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by

HIPAA Business Associate Addendum

DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

G. *Amendment of PHI.* To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.

H. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.

I. *Documentation of Disclosures.* To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. *Breaches and Security Incidents.* During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

HIPAA Business Associate Addendum

1. **Notice to DHCS.** (1) To notify DHCS **immediately** upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. This notification will be **by telephone call plus email or fax** upon the discovery of the breach. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to DHCS by the Social Security Administration, notice shall be provided by calling the DHCS EITS Service Desk. Notice shall be made using the “DHCS Privacy Incident Report” form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov), then select “Privacy” in the left column and then “Business Use” near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.asp>
[X](#)

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. If the initial report did not include all of the requested information marked with an asterisk, then within 72 hours of the discovery, Business Associate shall submit an updated “DHCS Privacy Incident Report” containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
 3. **Complete Report.** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. If all of the required information was not included in either the initial report, or the Investigation Report, then a separate Complete Report must be submitted. The report shall be submitted on the “DHCS Privacy Incident Report” form and shall include an assessment of all known

HIPAA Business Associate Addendum

factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve or disapprove the determination of whether a breach occurred, is reportable to the appropriate entities, if individual notifications are required, and the corrective action plan.

4. ***Notification of Individuals.*** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. ***Responsibility for Reporting of Breaches.*** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. ***DHCS Contact Information.*** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said

HIPAA Business Associate Addendum

changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646 Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Fax: (916) 440-5537 Telephone: EITS Service Desk (916) 440-7000 or (800) 579-0874

K. Termination of Agreement. In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:

1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.

L. Due Diligence. Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

M. Sanctions and/or Penalties. Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

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IV. Obligations of DHCS

DHCS agrees to:

- A. *Notice of Privacy Practices.*** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at www.dhcs.ca.gov (select “Privacy in the left column and “Notice of Privacy Practices” on the right side of the page).
- B. *Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures.
- C. *Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate’s use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

V. Audits, Inspection and Enforcement

- A.** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHCS’:
 - 1. Failure to detect or
 - 2. Detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS’ enforcement rights under this Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

HIPAA Business Associate Addendum

VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS; or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *Judicial or Administrative Proceedings.*** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. *Disclaimer.*** DHCS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

HIPAA Business Associate Addendum

B. *Amendment.* The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event:

1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHCS pursuant to this Section; or
2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

C. *Assistance in Litigation or Administrative Proceedings.* Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

D. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHCS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

E. *Interpretation.* The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.

F. *Regulatory References.* A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.

G. *Survival.* The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.

H. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any

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continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Parties:

Printed Name and Title of Person Authorized to Sign for Vendor
Contractor Company Name
Address

Signature and Date

Printed Name and Title of Person Authorized to Sign
Department of Health Care Services
Program Name
Address

Signature and Date

HIPAA Business Associate Addendum

Attachment A

Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- B. *Server Security.*** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.

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- D. *Removable media devices.*** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PHI or PI cannot be retrieved.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed

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accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

- L. Access Controls.** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. Transmission encryption.** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. System Security Review.** All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. Log Reviews.** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. Change Control.** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. Data Backup Plan.** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

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V. Paper Document Controls

- A. *Supervision of Data.*** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
- C. *Confidential Destruction.*** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. *Removal of Data.*** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- E. *Faxing.*** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. *Mailing.*** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.

Work Policies for Private-Sector Contracted Employees Office of HIPAA Compliance

Contract employees will need to set up a regular work schedule with their respective State contract manager. In general, the core hours are between 8:00 AM and 5:00 PM, although there is some flexibility to begin work at 7:00 AM. This schedule will need to be submitted by employees to their respective State contract manager during the first week of work.

- An occasional change to the schedule is allowable if approved in advance by the State contract manager.
- Permanent changes to the employee's work schedule also require approval by the respective State contract manager.

The typical duration of billable work in a day is 8 hours. Extended work hours (i.e., more than 8 billable hours per day) may be permitted as an exception only with the State contract manager approval **in advance** and only if the state contract manager deems the situation to be sufficiently urgent or emergent to warrant the exception.

Billable work may not be done on days in which the State buildings are closed (e.g., furlough days or official State holidays), unless it has been approved by the State contract manager in advance and only if the State contract manager deems the situation to be sufficiently urgent or emergent to warrant the exception.

All billable work must be done at 1700 K Street and/or 1501 Capitol Avenue, Sacramento, CA. If the contract employee receives approval in advance by the State contract manager, the following exceptions are allowed:

- Other DHCS or DHCS fiscal intermediary locations (e.g. to perform OHC-related meetings or business)
- When an OHC related meeting is held in another venue (e.g. conducting external stakeholder communication for providers)
- Attendance at OHC budgeted and approved conferences

Billable work is not allowed at any other location, unless it has been approved by the State contract manager in advance and only if the State contract manager deems the situation to be sufficiently urgent or emergent to warrant the exception.

Taking time out of a workday (e.g. child illness, doctor appointment, etc.) may be allowed if approved in advance by the State contract manager. However, in cases of personal illness or emergency situations, the employee need only notify the State contract manager in person or via e-mail / voice mail if the manager is unavailable.

Employees must inform their State contract manager no more than 60 minutes past their scheduled start time if they are going to be late.

Employees will be responsible for their own parking arrangements.

Note: OHC reserves the right to revise these policies as needed.